150 US 91

RECORD, CASE NO. 15156.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 826.

LEWIS HOLDER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED OCTOBER 4, 1892.

court, presumably because of their apparent weakness.

And that defendant, in this, and in each of the four cases involving the same questions, and each depending upon the determination of one case, should be awarded the costs contemplated in the 2d paragraph of Rule 23, seems clear. For that this case, one for debt, in view of the statute under which it is brought, and the decisions cited to show that the said statute is remedial rather than penal, entitling the defendant to all the consideration due one who brings an action at law for damages on contract or otherwise, is clear.

For the reasons given it is respectfully submitted that the judgment in the court below should be affirmed, with interest, the costs suggested, and the usual costs in the case.

Solicitor for defendant in Error.

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a In the circuit court of the United States for the western district of Arkansas.

Pleas and proceedings before the honorable Isaac C. Parker, judge of the United States district court for the western district of Arkansas, holding circuit court, in the case of United States vs. Lewis Holder, indicted for murder.

1 INDICTMENT.

United States of America, western district of Arkansas. In the circuit court, February term, A. D. 1892.

UNITED STATES
vs.
LEWIS HOLDER. } Murder.

The grand jurors of the United States of America, duly selected, empaneled, and sworn and charged to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That Lewis Holder, on the 24th day of December, A. D. 1891, at the Choctaw Nation in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one George Bickford, a white man and not an Indian, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Lewis Holder, with a certain gun, then and there charged with gunpowder and one leaden bullet, which said gun he, the said Lewis Holder, in his hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said George Bickford, and that the said Lewis Holder, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said Lewis Holder discharged and shot off as aforesaid, then and there feloniously, wilfully,
2 and of his malice aforethought, did strike, penetrate, and wound him, the said George Bickford, in and upon the right side of the breast of him, the said George Bickford, giving to him, the said George Bickford, then and there with the leaden bullet aforesaid, so as discharged and shot out of the gun aforesaid, by the said Lewis Holder, in and upon the right side of the breast of him, the said George Bickford, one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound he, the said George Bickford, then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Lewis Holden him, the said George Bickford, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

W. H. H. CLAYTON,
United States Attorney, Western District of Arkansas.

(On back:) No. 43. United States vs. Lewis Holder. Murder. A true bill. Lewis R. Hawkins, foreman. Witnesses: A. T. Echols, 15

mi. n. Wilburton, I. T.; Wm. Ellis, Hartshorn, I. T.; J. W. Bridges, Hartshorn, I. T.; J. H. Sloan, Hartshorn, I. T.; Joe Holder, Cherokee Na., 3 mi. from Ft. Smith, Ark.; C. M. Edmondson, 14 mi. north,
3 Wilburton, I. T.; Israel Cooper, 14 mi. north, Wilburton, I. T.; H. T. Gilreth, Hartshorn, I. T.; Uriah Cook, Wilburton, I. T.; J. A. Poteet, Wilburton, I. T.; John Bickford, Cherokee Na., 3 mi. from Ft. Smith, Ark.; Miller Jenkins, Choctaw Nation, 3 mi. from Ft. Smith, Ark.; Andrew Pettus, Choctaw Nation, 3 mi. from Ft. Smith; Joe Coley, near San Bois, I. T.; Noel Fulsom, near San Bois, I. T.; John H. Neal, Wilburton, I. T.; Rebecca Sloan, 4 mi. n. of Doss, Tex., in Chickasaw Nation, I. T. Filed Feb. 20, 1892. S. Wheeler, clerk.

4 In the circuit court of the United States for the western district of Arkansas, February term, 1892.

WEDNESDAY MORNING, 8½ o'clock, *Feb. 10th*, 1892.

Court met pursuant to adjournment. Present the Hon. Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

Record entries.

UNITED STATES } Charged with murder.
vs.
LEWIS HOLDER. }

Ordered by the court that one span of mules and one wagon and all other personal property found in possession of Lewis Holder when arrested be turned over to John Bickford, to be held by him, subject to the order of this court, to be used as evidence in the above-entitled cause.

SATURDAY, *Feb.* 20, 1892.

UNITED STATES } Indictment for murder. No. 43.
vs.
LEWIS HOLDER. }

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorney, and having had hearing of said indictment and it being demanded of him concerning said indictment above specified, and charged upon him how he would acquit himself thereof, he says he is not guilty as charged in said indictment and puts himself upon the country.

5 MONDAY, *February 22nd*, 1892.

(Caption omitted).

On this day, by agreement of parties, it is ordered by the court that this cause be and the same is hereby continued to the next term of this court, and set down for trial June 7th, 1892.

TUESDAY, *April* 26, 1892.

Ordered by the court that the following case now pending be continued and set down for trial as follows:

No. 43. Lewis Holder. Murder. July 25, 1892.

WEDNESDAY, *June 29th*, 1892.

(Caption omitted.)

On this day come the said defendant, by his attorney, and files his application in writing, verified upon oath, praying for witnesses in his behalf, at the expense of the United States.

Said application coming on to be heard, and the court being fully advised in the premises doth allow the same. It is therefore ordered that the legal expense of procuring the testimony of Jane Williams and two brothers named Long, in behalf of said defendant, be paid by the United States, and that a subpœna be issued for them, returnable July 25, 1892.

MAY TERM, *July* 27, 1892, *Wednesday*.

(Caption omitted.)

On this day by agreements of parties it is ordered by the court that this cause be and the same is hereby continued to the next term of this court, and set down for trial Aug. 9, 1892.

6 AUGUST TERM, *Saturday, Aug.* 27, 1892.

(Caption omitted.)

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorneys, Messrs. Byers & Byers; and it appearing from the return of the marshal that the said defendant has been served with a duly certified copy of the indictment in this cause, and a full and complete list of the witnesses in this cause; and that he has also been served with a full and complete list of the panel of petit jurors and alternates, as selected and drawn by the jury commissioners for the present term of this court, more than two entire days heretofore; and the said defendant having heretofore had hearing of said indictment and pleaded not guilty thereto, it is, on motion of plaintiff, by its attorney, ordered by the court that a jury come to try the issue joined. Whereupon the clerk called the entire panel of the petit jury, and after challenge by both plaintiff and defendant the following were selected for the trial of this cause, to wit:

William Allen,	John K. Mount,	Winfield W. West,
Freeland H. Bridges,	Wm. W. Mannon,	John A. Yeaden,
Thomas Cauthron,	William Patterson,	Gabriel N. Wright,
James H. Layman,	John M. Shaver,	Wm. P. Clardy.

Twelve good and lawful men of the district aforesaid, duly selected, empaneled, and sworn to try the issue joined, and a true verdict render according to the law and the evidence; and after hearing a statement of the case by the attorneys, and there not being time to further progress in the trial of this cause, they were put in charge of a sworn bailiff of

7 this court. And it is further ordered by the court that said jury be kept together and that the marshal of this district furnish meals and lodging to said jury and bailiff in charge until discharged by order of said court.

MONDAY, *August* 29, 1892.

(Caption omitted.)

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorneys, Messrs. Byers & Byers, and now come the jury heretofore empaneled for the trial of this cause, in charge of a sworn bailiff of this court, to wit:

William Allen,	John K. Mount,	Winfield W. West,
Freeland H. Bridges,	Wm. W. Mannon,	John A. Yeaden,
Thomas Cauthron,	William Patterson,	Gabriel N. Wright,
James H. Layman,	John M. Shaver,	Wm. P. Clardy.

Who took their seats in the jury box, and after hearing a portion of the evidence, and there not being time to further progress in the trial of this cause, they were put in charge of the sworn bailiff aforesaid.

TUESDAY *August* 30, 1892.

(Caption omitted.)

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorneys, Messrs. Byers & Byers, and now come the jury heretofore empaneled for the trial of this cause, in charge of a sworn bailiff of this court, to wit:

8	William Allen,	John K. Mount,	Winfield W. West,
	Freeland H. Bridges,	Wm. W. Mannon,	John A. Yeaden,
	Thomas Cauthron,	William Patterson,	Gabriel N. Wright,
	James H. Layman,	John M. Shaver,	Wm. P. Clardy.

Who took their seats in the jury box, and after hearing the balance of the evidence and the argument of counsel and receiving the charge of the court, retired in charge of the sworn bailiff aforesaid, to consider of their verdict, and after some time returned into court the following verdict, to wit:

"We, the jury, find the defendant, Lewis Holder, guilty of murder as charged in the within indictment.

(Signed) "WILLIAM ALLEN, Foreman."

Whereupon the jury was by the court discharged from the further consideration of the case, and the said defendant remanded to the custody of the marshal to await final sentence.

FRIDAY, *Sept.* 2*nd*, 1892.

(Caption omitted.)

On this day come the said defendant, by his attorneys, and files his motion to set aside the verdict of the jury and for a new trial in this cause.

TUESDAY, *Sept.* 13, 1892.

(Caption omitted.)

On this day come on to be heard the motion heretofore filed by the defendant, to set aside the verdict of the jury and for a new trial in this cause, and the court, being well and sufficiently advised in the premises, doth overrule the same.

9 MONDAY, *September* 19, 1892.

(Caption omitted.)

On motion of Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, the said defendent, Lewis Holder, was brought to the bar of this court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty, heretofore returned against him by the jury in this case, on the 30th day of August, 1892, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon the premises being seen and by the court well and sufficiently understood, it is considered by the court that the said marshal of the district aforesaid, cause the said Lewis Holder to be taken hence, and him, the said Lewis Holder, safely and securely keep, from the date hereof, until Wednesday, the 2nd day of November, A. D. 1892, and on that day between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Lewis Holder to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Wednesday, the said day of November, in the year of Our Lord, one thousand eight hundred and ninety-two, cause the said Lewis Holder to be hanged by the neck until he is dead.

(Caption omitted.)

On this day come the said defendant, by his attorney, and tenders
10 his bill of exceptions, and asks that the same be signed and made a part of the record in this cause, which is accordingly done.

And the defendant also files his assignment of errors, and petition for writ of error to the Supreme Court of the United States, together with his petition supported by affidavit, praying for an appeal in this cause at the expense of the United States.

11 *Bill of exceptions.*

UNITED STATES *vs.* LEWIS HOLDER. } Murder.

Be it remembered, that on the 26th day of August, 1892, in the circuit court of the United States for the western district of Arkansas, in the above-entitled cause, the following proceedings were had to wit:

The Government, to support the aforesaid issue, introduced the following witnesses: A. T. Echols, Israel Cooper, Charley Edmondson, John Bickeford, Andrew Petis, John H. Neve, Joseph Potete, Uriah Cook, Noah Fullsome, Harvey Gilreth, Rebecca Sloan, William Ellis, who testified as follows:

12 And among whom was John Bickeford, who had been sitting in the court room during the examination in violation of the order to place the witnesses under the rule, which was objected to upon the grounds that he had been sitting in the court room and heard all the other witnesses testify, which objection was overruled, to which ruling the defendant then and there excepted.

13 A. T. ECHOLS, having been duly sworn on behalf of the Government, was examined by the district attorney and testified as follows, to wit:

Question. What is your name?

Answer. A. T. Echols.

Q. Where do you live?

A. I live about one hundred and ten or fifteen miles west of here, in the Cherokee Nation.

Q. Do you know the defendant in this case, Lewis Holder?

A. I know the man that is called Lewis Holder, but I am not acqu'inted with him at all.

Q. Did you know in his lifetime a man named George Bickerford?

A. No, sir.

Q. Where did you live along about the last of last January?

A. I lived near Brazile Station.

Q. Please state if you found a body, said to have been the body of Bickeford, and if so when and where, and how came you to find it.

A. About the 29th of last January I was going from the neighborhood of Wilburton over across in the Sans Bois country.

Q. Where from?

A. In the neighborhood of Wilburton, on the new Choctaw railroad, one station above Red Oak. You will remember it was very dry about that season of the year, and I was looking for an hour for water to find a place to camp.

Q. Where were you going from?

A. I was going from the neighborhood of Wilburton.

Q. To where?

14 A. To the neighborhood of Sans Bois, in the Sans Bois Valley. Just about sundown, or a little after sundown, I stopped my wagon in the middle of the road, and went off of the road to the top of a little cañon and looked down for water. I saw no water, but, however——

Q. What did you want water for?

A. For the purpose of cooking and watering my stock.

Q. Then I presume you were going to camp there that night.

A. Yes, sir. I went on down the hill about three hundred yards from where I had left my wagon——

Q. Into the cañon?

A. Yes, sir. I was standing there prospecting, looking around, and I asked myself the question——

Q. Never mind what you asked yourself; say what you saw.

A. I looked down about fifteen steps from where I was standing and saw the body of a dead man. I walked down near by, I suppose within four or five or six feet of it, and peeped down to his face (he was laying pretty near on his face) to see if he was dead or asleep. I saw then that his nose was eaten off, and by a slight examination I saw that one of his ears--his left ear—was eat off too, and it being night and just good dark, I turned and went away. I prosecuted my journey until I reached the Sans Bois Valley, near where I got plenty of water, and about an hour or two hours in the night. There I camped until morning.

Q. How far from where you found the body?

A. About five or six miles.

Q. You say you camped away from the body five or six miles?

A. Yes, sir. Next morning, after we had our breakfast, I went on till I came to the first house on the road on which I was camped.

15 Q. Whose house was that?

A. That was called Mr. Charley Edmondson's house. He wasn't there. There was an old man there—an Indian—by the name of Johnny Riddle, and I told him what I had found.

Q. State what he did.

A. Mr. Johnny Riddle took it upon himself to get up himself and five other Choctaws. I believe there were in all six of us—I would not be sure about that—anyhow, there was five or six of us, all went together to where the body was found.

Q. That was the day after you found the body?

A. Yes, sir.

Q. What day was it you found the body?

A. It was on Friday.

Q. Do you remember the day of the month?

A. Yes, sir; on the 29th of January.

Q. Go ahead.

A. Me and these Choctaws went out to examine the body, to see if either one of those men could identify the body. They decided it was a white man, and they knew not from whence he came, so they insisted I should examine the man, he being a white man, and see if I could get any trace of his identity. I found three or four letters, a daybook or two, and a pair of kid or sheepskin gloves.

Q. Where did you get them?

A. Off his clothes—off his person.

Q. From his pockets?

A. Yes, sir. I found the gloves in the hippocket of his pants, and I found the daybook, I think, in his coat pocket, and the letters. And lying off about five or ten steps from there lay a black hat, that

16 one Mr. Jo Coley discovered, one of the Choctaws that was with me.

Q. How far was that off from the body?

A. Five or ten steps, I don't remember exactly. It was probably the distance from here to that first row of seats there (indicating about thirty feet). And we took these letters and the daybook, and a pocket handkerchief, I believe we got, and this hat, and a small strap of leather that I found in his pocket, and put them all together nicely, and taken the pocket handkerchief and tied them up, and tied these things to a horn of the saddle, until we got down off the mountain, and this Indian that was carrying them on the horn of his saddle says to me, "You had better carry these things now."

Mr. BYERS (of counsel for defendant). Never mind any conversation.

The WITNESS. He turned them over to me, and I carried them home and I kept them over night with the understanding I was to meet Mr. Coley the next morning at a neighbor's house, something near a mile from there, and turn these things over to him. And the next morning I went to where I was to meet him, and I met several of these Choctaws, and Mr. Coley was there, and I turned him over the hat and these things we got off the person of the man, and that is all I know about it.

The DISTRICT ATTORNEY. The man was dead, was he?

A. Yes, sir.

Q. Did you observe any wounds on him?

A. Yes, sir; there was a hole that seemed to have been made by a gun of some description in the back of his neck, or between his shoulders, tolerable high up, a little funnel-like shaped, with his coat badly p'wder-
burnt or charred, rather; looked like it had been charred with
17 powder, and right here (indicating on front of neck near Adam's apple) was a small hole, looked to be about the size of number one or two buckshot, seemed to be, and I believe that one of the Indians that was with me took a little stick to see what kind of a place it was, and by probing he found that it was a cavity, an open cavity. He probed down an inch or inch and a half or two inches deep, and we decided that he had been shotten with a gun, and this b'ing a very small hole, some of them decided it was a shotgun, and the balance of the load had lodged in his neck.

Q. How did you say that shot was behind; how far below the collar of the coat?

A. It must have been here about (putting finger about two inches below coat collar).

Q. You say the coat was powder burnt or charred?

A. Yes, sir.

Q. Could you tell whether the wound in the front part of the neck went out or in?

A. I don't know; no, sir. I could not tell positive whether it went in from the back or not.

Q. Do you remember the address of any letter that was found there?

A. No, sir.

Q. Would you know them if you would see them?

A. I probably would.

Q. Look at these letters and these books that I hand you.

A. This is one of the day books, and this is another one. I would identify the day book by a little dark splotch made on the corner of it by
the blood, and I also identify this letter by the same corner, and
18 this letter, and here is another one and another one. These are the letters, and those are the day books.

Q. Is this the hat I now hand you that you found there?

A. Yes, sir; that is the hat.

Q. You say this occurred on the 29th of January?

A. Yes, sir.

Q. Please state if the body was decayed to any great extent.

A. No, sir; it wasn't decayed at all; it wasn't even tainted; didn't even smell offensive.

Q. What condition was it in regards to whether it was frozen or not; was the body frozen?

A. No, sir; not at that time. I decided though, it had been before, from the looks of the outside clothing that was on the body; I decided that the body had lain there some four or five weeks, at least three weeks, because either rain or snow fell on the body.

Q. How can you tell that?

A. I could only tell it by the appearance of things. The ends of the fingers were inclined to be dry, and there was some small places, too, on the hand, that had been eaten by varmints of some kind—rats, mice, or possom, or something that would prey upon a dead carcass, and the outside of the coat, it being a dark coat, the fur or fuzz on this coat was inclined to be a little bleached by water. You may take a garment——

Q. Never mind that; you testify to what you saw.

A. And from the appearance of these garments that were on the carcass, and the appearance of his hands, owing to the cool weather previous to that time, I decided, it being in a little canon, surrounded by a
19 thick timber, that he had laid there three or four or five weeks.

Q. Did you see any wagon tracks, or man track, or horse track?

A. No, sir; I hunted for them but I could not find them.

Q. Who were the Indians that went back with you?

A. I only know the names of three of them. There was Mr. Israel Cooper, Henry Cooper, and Mr. John Riddle.

Q. Israel Cooper is here?

A. Yes, sir.

Q. Is Riddle here?

A. No, sir.

Q. Is Henry Cooper here?

A. I don't know. I don't suppose he is subp'enaed in this case.

Q. I believe you say Israel Cooper is the man who gathered up the Indians to take them out there.

A. Yes, sir.

Q. Was the man who was killed a white man or an Indian?

A. He was a white man.

Q. Did you have anything to do with sending off to get somebody to identify the body after that?

A. No, sir; I did not.

Q. This was on the 29th day of last January?

A. Yes, sir.

Q. In the Choctaw Nation?

A. Yes, sir.

Q. Do you know how far it was from Hartshorne that you found this body?

A. No, sir; I don't know exactly just how far.

The COURT. Well, about how far; just locate it with reference to Hartshorne?

The DISTRICT ATTORNEY. There are others here who will know who live at Hartshorne.

The WITNESS. There are others here better acquainted with the country than I am.

20 Cross-examination by Mr. J. C. BYERS:

I believe you say your name is Echols?

A. Yes, sir.

Q. How long have you lived in that country?

A. I have lived in the Choctaw Nation, next January will be four years.

Q. Where did you go to the nation from.

I went directly from Fort Smith and indirectly from the State of Georgia.

Q. Did you ever live anywhere in the State of Arkansas?

A. Yes, sir; I lived 12 years in Franklin County, five miles north of Ozark.

Q. By what name were you known in Franklin County?

A. White Cotton.

Q. How many names have you been known by?

A. Only two, sir, that I know of.

Q. What is your right name?

A. Echols.

Q. Why did you assume the name of White Cotton?

A. My mother married a man by the name of White Cotton after the death of my father, and everybody knew my mother as White Cotton; and of course when my playmates and associates formed my acquaintance they knew my mother, and called me by her name.

Q. That was your stepfather's name—White Cotton?

A. Yes, sir.

21 Q. I believe you say you camped some five or six miles from the body?

A. Yes, sir.

Q. Did you see any one from the time that you discovered the body that night until you went to this settlement the next morning?

A. Nobody except persons that were at the wagon at the time I found the body.

Q. Did you relate to them the finding of the corpse.

A. Not until after we stopped to camp.

Q. You made no examination of the corpse, only to ascertain that he was dead.

A. No, sir.

Q. You state in your judgment the corpse had been frozen?

A. Yes, sir.

Q. Did you discover anything on the ground, that would indicate a scuffle?

A. No, sir; I did not.

Q. If the weather was cold enough to freeze the body, it would freeze the ground so hard there would not be any trace of a scuffle, would there?

A. I wish you would state that question again.

Q. I say, assuming that your hypothesis is correct, that the body was frozen—I believe you give that as a reason for its 'reservation?

A. Yes, sir.

22 Q. I say assuming that to be correct, then if the weather was cold enough to freeze the body the ground would be frozen so hard as not to leave any trace of a scuffle.

A. Yes, sir.

Q. You found no weapons of any kind, did you, around there?

A. No, sir; I did not.

Q. What did you fix it in your judgment for that the body had lain that long?

A. As I said in the beginning, it was from the outside appearance of the body?

Q. Purely a surmise of yours, was it?

A. Yes, sir; and the reason I decided he had been frozen was from the fact that he wasn't tainted.

Q. I believe you told the district attorney you saw no wagon tracks?

A. No, sir; I did not see any.

Q. I wish you would be kind enough to describe the position that the body was in when you found it.

A. The man was lying pretty near on his face, with his right hand folded under him, with his hand turned in that position, and the right side of his face was down and the left hand looked like I have showed, in this position, sort of on his back. He was laying in a kind of a crouched position, and I think his head was turned sorter this way (indicating by throwing head forward), and his head was laying up the hill, towards me. I walked around to where I could see his face, and
23 I ascertained, after a slight examination, that he was dead.

Q. Was there any water near there?

A. I saw no water near there.

Q. What condition was his clothing in; was his pockets natural or had they been trifled with?

A. They were just like ordinary men wear their pockets. I saw nothing that indicated robbery or a search of the man's p'rson for money or goods or anything of the kind.

Q. What did you do with these articles?

A. As I stated in the commencement of my testimony, I tied them up in a pocket handkerchief.

Q. Did you retain them until they were taken possession of by a Government officer?

A. Yes, sir; I retained them until next morning about nine o'clock, and I turned *then* over to a Choctaw officer by the name of Joe Coley, and I haven't seen them since until this morning.

Q. I believe you identify this by marks; is this a blood stain?

A. Yes, sir; that is a blood stain.

Q. I suppose that is the condition they were in?

A. Yes, sir.

Q. What pocket did you find them in?

A. In the inside breast pocket, I believe; but I am not sure.

Q. Of the coat or vest?

24 A. I will not swear to that, because I don't remember.

Q. Did you notice the address on these envelopes?

A. No, sir; there is nothing about the letters I can identify them by except these black splotches on the corners.

Q. These letters are addressed to George W. Toms; one at Tamaha. Whereabouts did you find this hat?

A. Laying off some five or ten steps in a south direction from where the body lay, right in the edge of a little washout—cavity in the hill.

Q. When did you first see the defendant?

A. Last February, when I was subpœnaed as a witness before the commissioner in this case.

Q. You didn't know the deceased, Bickeford?

A. No, sir.

Redirect examination by the DISTRICT ATTORNEY:

I want you to describe a little more fully the place where he was lying; which way did the road run?

A. Some call it north and south; but I particularly noticed that road, and it runs a little northeast and southwest.

Q. Which way were you going?

A. I was going northeast.

Q. Were you among the mountains?

A. Yes, sir; I was on top of a range of mountains.

Q. What mountains?

A. Called the Sans Bois Mountains.

Q. You say the mountain run up on which side of the road?

25 A. On the left-hand side of the road as I was going northeast.

Q. Run straight up the road or angling to the road?

A. It was running near north, angled a little.

Q. How far was that cañon from the body?

A. The cañon made off from the body and into the road.

Q. I don't see how it is possible for the cañon to make to the road.

A. I went down and the place was up; went down the mountain.

Q. You were on top of the mountain and the cañon went down?

A. Yes, sir.

Q. I beg your pardon then; I was wrong about that. It commences, then, to the road?

A. Yes, sir; however, it wasn't a cañon at the road; there was a small basin, but off about 100 yards from the road there was a kind of a jump-off, kind of a head of rock, right in the head of a hollow, running in a north direction, or nearly so.

Q. How far was that jump-off from the road? There is a ravine until you get to the jump-off?

A. It is something near one hundred yards.

Q. How deep was that jump-off?

A. I suppose it commences with four, or five, or six, or eight feet.

Q. Rocks?

A. Yes, sir; simple fall of water.

Q. Did you say there was water there?

A. No, sir; not at that time there wasn't.

Q. You went on down the cañon?

A. Yes, sir.

Q. I believe you say you found the body about three hundred

26 yards?

A. Yes, sir.

Q. How deep had the cañon made where the body was?

A. It was a considerable decline, but I am not qualified, however, to say the amount of the degree of decline it was, but it was a considerable fall; probably ten feet, and not over thirty.

Q. Was it in a deep mountain, with walls upon either side?

A. No, sir; it was a pretty smooth cañon, like this [indicating with hands]. Right in the hollow had been a considerable little rivulet.

Q. Trees there*m?*

A. Yes, sir; trees tolerable thick, right in the cañon, but there was no underbrush.

Q. Was he lying in the bed of the cañon?

A. No, sir; he was laying off from where the water had run in the center of this cañon, I will say about 12 or 14 feet; 14 feet anyhow.

Q. Fifteen feet from the creek?

A. Yes, sir.

Q. How much lower, in your judgment, being three hundred yards from the road, was it than the road?

A. It must have been one hundred feet lower than the road.

Q. No opportunity or chance to get in there with a wagon?

A. A man, by driving on very sidling ground, might get in there with wagon; I suppose he could lock all wheels and slide them, like these log-haulers out there in the mountains.

Q. How far was the nearest house to that place?

A. Six miles, I call it; I didn't measure it.

Q. Whose house was that?

A. The nearest house was about five miles.

27 Q. Whose house was that?

A. It was on Mr. Isreal Copper's farm.

Q. Did you pass that house that night?

A. No, sir; not directly. I passed it just off the road; something like half a mile the house is.

Q. Whose house did you go to the next morning?

A. Charley Edmondson's place.

Q. How far is that from the place?

A. About six miles.

Q. You must have gone near the house, then, when you camped?

A. I camped sort of betwixt the two houses. However, I was past the first house.

Q. Did you find any money on the body?

A. No, sir; I did not.

Q. Did you find any notes or checks or anything of that kind?

A. I remember a note of some description.

Q. See if you can find it amongst these papers.

A. Yes, sir; this is the note I saw.

Q. It is from Mr. James K. Barnes. I will read it:

"FORT SMITH, ARKANSAS, *October* 6, 1891.

"SIR: Your letter of the 4th received. There are no letters to your address in this office. If any should arrive they will be forwarded to you.

"Yours, respectfully,

"JAMES K. BARNES, *P. M.*
"By SID. B. REDDING, *Asst. P. M.*"

28 Q. Did you examine the body all over to see if there was any other papers?

A. Yes, sir; I examined it all. I felt like examining it, under the circumstances.

Q. The body wasn't corrupted?

A. No, sir.

Q. There was no trouble about examining it then?

A. No, sir.

The DISTRICT ATTORNEY. I will now introduce in evidence these papers. On this memorandum book, on the back thereof, is the following: "The Regulated Diary or Pocket Companion, for Everybody. Published by J. H. Zelin Company, Philadelphia." On the back of the other one is "Regulator Pocket Book, containing a convenient almanac and valuable hints for the health and comfort of all. Presented by ." On the inside there are various items of memoranda, which are not important to give. On this envelope, marked, "Post-Office Department, post-office at Fort Smith, Ark.; official business," with the penalty in right-hand corner, bearing the Fort Smith stamp, and directed to G. M. Bickeford, Hartshorne, I. T. On the inside of that is the following, in the upper right-hand corner: "G. H. 1520. Fort Smith, Arkansas, October 6, 1891. Sir: Your letter of the 4th is received. There are no letters to your address in this office. Should any arrive they will be forwarded you. Yours, respectfully, James K. Barnes, P. M., by S'd B. Redding, Asst. P. M. 5–316.

29 And here is another letter, addressed to George Toms, Wilburton, I. T. Inside of that is simply information from a superintendent of money-order department with regard to sending money by registered letter and so forth. Here is a letter addressed to Mr. George W. Toms, Tahama P. O., I. T. It is marked Red Oak, Dec. 21, 1891. Ind. T., on a return envelope. There is a letter inside signed by Lewis Holder, the defendant, dated Nov. 30, 1891. I will introduce the whole letter without reading it. Here is another letter marked Mr. George M., and the name torn off, Jenny Lind, Sebastian County, Arkansas. A letter from Springfield, Colorado, Sept. 13, 1891, of Mrs. H. Bickeford to her son. That letter I will consider read. I will introduce also the other memorandum book, upon the back of which I will mark XY.

Recross-examination:

Mr. BYERS. In your examination of the clothes, did you examine all the pockets?

A. I don't know whether I did or not. I examined the pockets of a pair of overpants, and a pair of underpants, and a coat and vest, and if he had on any more pants I don't know it. However, he might have had on a pair of pants betwixt this two pair.

Q. Did you make a thorough, or simply a superficial examination of the body?

A. I just made a superficial examination of the body.

30 Re-direct examination:

The DISTRICT ATTORNEY. You undertook to get everything, didn't you; what did you examine the body for?

A. I examined the body as I said in the commencement of my testimony——

Q. State, please, why you examined the body.

A. For the purpose of recovering something that would lead to his identity.

Q. I suppose you intended to get everything that he had, didn't you?

A. Yes, sir; I suppose I did. I thought that he had on only two pair of pants, but I learned——

Q. You went through the pockets of the two pair of pants, and the coat and vest?
A. Yes, sir.
Q. Did he have an overcoat on?
A. No, sir.
(Witness excused.)

31 ISRAEL COOPER, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. What is your name?
Answer. Israel Cooper.
Q. Where do you live?
A. I live in Sandbois County.
Q. Did you see the dead body of a man up there in that Indian country said to be Bickeford?
A. Yes, sir.
Q. When did you see it?
A. I seen it in January.
Q. Did you go up to the place where the body was found?
A. Yes, sir.
Q. Who went with you?
A. Echols, and some more Choctaws.
Q. Who were they; can you name them?
A. Joe Coley is one, and John Riddle, and Henry Cooper, my brother, and Norris Cooper.
Q. Were there any others; do you know this man Echols?
A. Yes, sir.
Q. Was he along?
A. Yes, sir.
Q. He is the man that found the body, is he?
A. Yes, sir.
Q. How far from your house was it that you found the body?
A. About 5 or 6 miles.
Q. Where was it?
A. Down there close to Wilburton.
Q. How far from Wilburton?
A. About fifteen miles.
Q. Did you live in the mountains?
A. No, sir.
Q. Was the body in the mountains or out of it?
A. In the mountains.
Q. What mountains?
A. The Sanbois Mountain.
Q. That is about 5 or 6 miles from your place?
A. Yes, sir.
32 Q. Whouse house was the nearest house?
A. My house.
Q. What kind of a country is it up there in that Sanbois Mountains; are there trees there?
A. Yes, sir.

Q. No farms?
A. No, sir; you can not farm there.
Q. Can you tell us what kind of a place you found the body in? Describe it now the best you can.
A. It was a sort of a branch or hollow.
Q. How far from the road?
A. About 300 yards, between 2 and 300 yards.
Q. About three hundred yards from the road, in the hollow, you found the body?
A. Yes, sir.
Q. In what condition was the body; was it decayed, rotted, or not?
A. No, sir; it wasn't.
Q. Were there any wounds on it, any place where it was shot?
A. Yes, sir.
Q. Where?
A. Right here [indicating in back short distance below coat collar].
Q. What kind of a shot was it?
A. I don't know.
Q. Was it a pistol shot or gun shot, or could you tell?
A. It looked like a shotgun shot.
Q. What makes you think it looked like a shot with a shotgun?
A. Big hole there.
Q. Did you see any wound except right there?
A. It came out here, one of them, right in front [indicating on front of neck].
Q. Had that shot gone in there or come out there?
A. It came out there.
33 Q. Went in back here, you think?
A. Yes, sir.
Q. Did you notice any powder burn on the body?
A. Yes, sir; it was burned right here [indicating on back where the ball was said by the witness to have entered].
Q. How big a place is that?
A. About that big [indicating about 2 or 3 inches in diameter].
Q. That was a powder burn, did you say?
A. Yes, sir.
Q. Was there any blood on the man that you noticed?
A. Yes, sir.
Q. What did you men do with the body when we got to it?
A. We left him there.
Q. Didn't you do anything with it, turn it over or take anything from it?
A. Just this handkerchief and these papers; that is all.
Q. Who got those?
A. Echols.
Q. Did you find a hat there?
A. Yes, sir.
Q. Where was the hat?
A. Found it about 10 steps from him.
Q. Do you know the hat?

A. Yes, sir.
Q. Look at this hat and see if that is it.
A. Yes, sir; that is the same hat.
Q. You found that lying off ten steps from the body?
A. Yes, sir.
Q. This you say was in January; do you know what day in January it was?
A. No, sir; I can't tell.
Q. Had you ever seen this defendant before that time?
A. Yes, sir; I seen him.
Q. Where did you see him?
A. I seen him close to my house.
Q. How far from your house?
A. About 300 yards.
Q. Anybody with him?
A. Yes, sir.
34 Q. Who?
A. A boy and a young man.
Q. That was close to your house?
A. Yes, sir.
Q. When was that?
A. That was the 22nd of December.
Q. Before Christmas or after? You know when Christmas comes?
A. Yes, sir.
Q. Was it before or after Christmas you saw him?
A. It was December 22nd.
Q. I know, but how do you know it was December 22nd? Can you tel' how long it was before Christmas? How do you know it was December 22nd you saw him?
A. I can't understand you.
Q. You say that you saw him, and the young man, and the boy the 22nd of December; is that right?
A. Yes, sir.
Q. How do you know it was the 22nd of September? How do you know it wasn't the 21st or 23rd? You say it was the 22nd—how do you know it was the 22nd? What makes you know that?
A. The 25th was Christmas, and it was the 22nd.
Q. You say the 25th was Christmas, and you saw him on the 22nd?
A. Yes, sir.
The COURT. You count back from Christmas to that time?
A. Yes, sir.
The DISTRICT ATTORNEY. Now, then, you saw this man and the young man, and the boy pass your house?
A. Yes, sir.
Q. Have you ever seen that boy since?
A. Yes, sir.
Q. Where?
A. He is here.
Q. Who is he?
A. Joe Holder.

Q. He is this defendant's son?
A. Yes, sir.
Q. Have you ever seen the young man since?
A. No, sir.
35 Q. Could you tell whether the man you found there dead was that young man or not?
A. Yes, sir; the same man.
Q. When they were going by your house which way were they going?
A. They told me they were going to Wilburton.
Q. In what direction was the body from your house?
A. Towards Wilburton.
Q. In going to Wilburton, would you pass by where the body was found?
A. Yes, sir.
Q. How far from Wilburton?
A. 25 miles.
Q. In going from your house what direction did you go to go to Wilburton?
A. West; Wilburton is west from my house.
Q. In going from your house to Wilburton you go up over the Sanbois Mountains, do you?
A. Yes, sir.
Q. Pass by where the body was on to Wilburton, on the other side?
A. Yes, sir.
Q. That is right, is it?
A. Yes, sir.
Q. You say it was on the 22nd day of December you saw these men; how long after that was it that you found the body?
A. It was pretty near a month, about 2 or 3 weeks.
Q. Do you know exactly when it was you found the body?
A. No, sir.
Q. Did you see them any more except that one time?
A. That is all.
Q. What kind of a hat was this man wearing at that time?
A. A black hat.
Q. What kind of a hat was the deceased wearing, the young man?
A. A white hat.
Q. How long did they talk to you; how long did they stay there when you saw them?
A. Staid there about 30 minutes.
36 Q. There at your house?
A. No, sir; in the road. They were killing rabbits.
Q. Were they in the wagon at the time or out of it?
A. Yes, sir; they had a wagon.
Q. How were they killing rabbits? Shooting them or how?
A. Trailing them.
Q. Did they have a dog?
A. Yes, sir.
Q. What did they say to you?
A. They said they were going to Wilburton; that is all.

Q. You stated they were there 30 minutes; is that all they said during that time?

A. They talked there lots, but I don't remember.

Q. Did they talk many to you when they were talking?

A. Yes, sir.

Q. If they talked any to you, and you talked any to them, tell me what you talked about, if you remember? Did they say what they were going to do at Wilburton?

A. They said they were going to Wilburton.

Q. Did they say what for?

A. No, sir; just told told me that, stay in the mountain two or three days trapping, they told me.

Q. That they were trapping, and had staid in the mountain two or three days, and were going to Wilburton?

A. Yes, sir.

Q. Do you know whether they had any furs or not?

A. No, sir.

Q. What kind of a wagon and team did they have?

A. They had a mule team.

Q. Have you ever seen those mules since?

A. Yes, sir; I saw them right down here.

Q. When?

This morning and yesterday.

37 Q. Who had them here? Who brought the team here; who had them in charge when you were looking at them yesterday?

A. I have forgot his name.

Q. Was it Mr. Bickeford?

A. Yes, sir.

Q. He is the man?

A. Yes, sir.

Q. Those are the same mules?

A. Yes, sir.

Q. Did you see the wagon?

A. Yes, sir.

Q. What kind of a wagon was it these men had?

A. A little wagon.

Q. Anything the matter with it?

A. The left fore wheel was broke, the axle.

Q. Who could they get along if they broke the axletree?

A. It was tied.

Q. How was it tied, how was it fastened? Explain that the best you can. How did they tie it?

A. Tied it with a rope.

Q. What was it they tied with a rope? You say that the axle was broken and tied with the rope. Explain how they tied it with a rope; tell how it was done that way. Don't you understand me?

A. No, sir.

Mr. BYERS (of counsel for defendant). I think, if the court please, that this witness had better be examined through an interpreter.

The COURT. He is doing very well. It is much more satisfactory and more expeditious to get through without an interpreter if we can.

The DISTRICT ATTORNEY. How was that axletree tied?

38 A. It was tied around this way [i'dicating].

Q. Was there anything under it?

A. Yes, sir; a stick under it.

Q. Then it wasn't tied around with a rope?

A. Yes, sir.

Q. You saw that, did you?

A. Yes, sir.

Q. You saw that the axle was broken?

A. Yes, sir.

Q. These are the same mules you saw to-day with Mr. Bickeford that you saw these men have?

A. Yes, sir.

Q. Is it the same wagon?

A. Yes, sir.

Q. Is the axletree broken now?

A. No, sir.

Q. Then there is another axletree in it; it is not the same axletree?

A. No, sir.

Q. I believe you say you saw a little boy with them; is he here?

A. Yes, sir.

Q. That is the same boy you saw on the 22nd?

A. Yes, sir.

Q. Did you see them when they left there going on?

A. Yes, sir.

Q. Which way did they go?

A. They went towards Wilburton.

Cross-examination by Mr. J. C. BYERS:

Q. You say that they talked up there with you about 30 minutes, about half an hour?

A. Yes, sir.

Q. What were they talking about?

A. They said they were going to Wilburton.

Q. Is that all they talked about during the time they were with you?

A. They said they were there trapping.

Q. Did they trap any while they were there talking to you?

39 A. No, sir.

Q. They didn't trap you, did they?

A. No, sir.

Q. Did the old man talk to you about renting some ground?

A. He told me he would be back down there, and he said he wanted to rent some place.

Q. Did you tell him you could not rent him any because you had no tenement houses—that, is, you had no house on the farm that he could live in; how about that? And did he tell you that he could live in a tent if you could spare him some ground; can you understand that?

The COURT. Did this man ask you to rent land of you?

A. Yes, sir.

Q. What did you tell him then; what did you say about it to him?

A. I told him that I would build him a house.

Q. Mr. Byers wants to know if you told him you didn't have any house that he could live in?

A. Yes, sir; I told him that.

Mr. BYERS (of counsel for defense). Then what did he say; that he would come back?

A. Yes, sir; he said he would be back.

Q. Did he specify any time when he would be back; did he say when, whether to-morrow or a week, or any particular time when he would be back?

A. No, sir.

Q. Is there any marks on these mules? How do you identify these mules as being the same mules that was there, by any mark or brand that was on them?

A. I didn't notice any marks.

Q. Then, do you know that these are the same mules?

A. Yes, sir.

Q. Do you know it simply by some one telling you so, or are you prepared to swear these are the same mules that were they them out there; do you know they are the same ones?

A. Yes, sir.

Q. How do you know it?

A. I know it by the color.

Q. What color are they?

A. I don't know; I can't tell you.

Q. I want you to tell this jury how you identify them as being the same mules.

The DISTRICT ATTORNEY. These are the mules right out here in front of the court-house?

A. Yes, sir.

Mr. BYERS (of counsel for defense). Is that the way you identify them, because they are in front of the court-house?

A. I can't understand you.

Q. What is there on the mules, what marks or scars or anything there on the mules that makes you know that they are the mules, that they are the same ones you saw out yonder; is there anything on them?

A. I didn't notice.

Q. You don't know that there is?

A. No, sir.

Q. What is there about that wagon that enables you to know that is the same wagon that was out there?

A. It is the same wagon.

Q. You say that wagon had a broken axle when you saw it, and now it has a new one?

A. Yes, sir.

Q. Is that the way you know it?

A. Yes, sir.

Q. Somebody told you they had a new axle put in it, didn't they?

A. No, sir.

Q. How did you know then?

(No response.)

Q. What was the feeling between these men at the time they were there; did they seem to be friendly or were they quarreling; were they mad at each other?

A. They were good friends.

41 Q. Did you see any weapons, any guns or pistols, with them?

A. They had a shotgun.

Q. Who had the shotgun?

A. The old man.

Q. What was he doing with the shotgun?

A. I don't know.

Q. He had it in his hand, did he?

A. Yes, sir.

Q. Who was driving the mules?

A. That boy was driving the mules.

Q. What was the young man doing?

A. He was walking.

Q. Was there anything said by either one of them as to whose mules and wagon they were? Did the old man claim them or the young man?

A. I don't know; I never asked.

Q. You didn't hear either one of them say whose they were?

A. No, sir.

Q. How big a man was the young man; was he a large man or a small man?

A. He was a tolerable heavy man, heavy set.

Q. Was he larger than the old man?

A. A little heavier.

Q. Was he light color or dark color; did he have light hair or dark hair?

A. It was light.

Q. Did you notice what color his eyes were, whether they were light or dark?

A. I didn't notice.

Q. What kind of clothes did he have on?

A. He wore overalls.

Q. Is that al' he had on, a pair of overalls?

A. A coat.

Q. What kind of an overcoat did he have on?

A. It was just a smal' coat.

Q. Didn't have on an overcoat?

A. No, sir.

Q. What color was it, dark or light?

A. Sort of yellow coat.

Q. What was the color of his his overalls?

A. Yellow overalls.

Q. What kind of boots did he have on?

A. I didn't notice his boots.

42 Q. Did he have on boots or shoes?

A. He had on boots?

Q. Did he have anything in his hands that you saw?

A. He had a walking stick.

Q. You say that they were catching rabbits; how many did they have?

A. They didn't catch any.

Q. Whereabouts were you; you say you were standing in the road; were you near your home, or how did you come to meet them?

A. I was going home.

Q. How did they happen to stand and talk to you?

A. It was right close to the road; that is the reason I stopped.

Q. Did they just drive up and stop and begin talking to you?

A. No, sir.

Q. Did you begin talking to them?

A. I stopped right there——

Q. Did they stop and ask you the directions about where they were going or anything?

A. Yes, sir.

Q. Who done the talking in the conversation; was it the old man or young man that did the talking?

A. The old man did the talking.

Q. And the principle part of his talk was about *about* renting some land; is that right?

A. He wanted to rent land.

Q. The young man did not say anything about renting land, did he?

A. No, sir.

Q. Now, then, I want you to tell me, if you can, how you understand, how you recognize, or how you know that the man you found dead there s the same man that you saw at that time; how do you know it is the same man?

A. I know it by the coat and by the clothes he had on, coats and overalls.

43 Q. Were you there when Mr. Echols went through his pockets, searched him?

A. Yes, sir.

Q. What all did he find?

A. He found three handkerchiefs.

Q. What did he do with the handkerchiefs, do you know; was three handkerchiefs all he found on his person, in his pockets?

A. Some papers.

Q. What kind of papers?

A. I don't know what kind.

Q. Newspapers?

(No response.)

Q. How many papers did he find, do you know?

A. I don't know.

Q. Is that all he found?

A. He found a hat.

Q. Did he find that in his pocket?

A. No, sir.

Q. I am asking you what he found in his pocket. What else besides the papers did he find in his pocket, if you know?

A. I didn't notice anything else.

Q. You don't know that he found anything else?

A. No, sir.

Q. You were there all the time, were you not?

A. Yes, sir.

Q. Whereabouts was the hat that he found; how far from the body of the man?

A. About 10 steps.

Q. What did you do with the body?

A. We left it there.

Redirect examination:

The DISTRICT ATTORNEY. Did you go back there the next day with a party of men?

A. No, sir.

Q. Do you know who did?

A. I think there was pretty near all white fellows went.

Mr. BYERS (of counsel for defense). Do you know where these parties camped before this time?

A. No, sir.

Q. Do you know where there is a cedar tree cut up there?

A. No, sir; I didn't notice it.

44 CHARLES EDMONDSON, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Were you before the commissioner?

Answer. Yes, sir.

Q. Where do you live?

A. I live at Cavanaugh switch.

Q. Where did you live last Spring?

A. Sandbois.

Q. Do you know where the dead body of Bickeford was found?

A. No, sir; I wasn't right at the place; they told me where it was.

Q. About how far from your place?

A. About 5 miles.

Q. Were you at home at that time?

A. Yes, sir; when they first reported it I was not at home, but I came home afterwards.

Q. You didn't go up to the body?

A. No, sir.

Q. You were not at home?

A. No, sir.

Q. Please state if you know the defendant Holder.

A. I never seen the man but twice, I believe; didn't think anything about it.

Q. Where did you see him the first time?

A. At Brazile station.

Q. When was that?

A. About the 10' or the 15th of December, I think, as well as I remember now; along about the 15th.

Q. Was there anybody with him?

A. Yes, sir; there was two men and a little boy.

Q. Do you know who they were?

A. No, sir; they were strangers to me.

Q. How were they, horseback or on foot?
A. No, sir; they had a little wagon.
Q. Give some description of the outfit?
45 A. They had a couple of small looking mules and a little wagon, looked like it had been a spring wagon probably; I never paid much attention to it.
Q. Where did you see them?
A. At Brazile station.
Q. What were they doing?
A. They were travelling on up the road, going on up. I had stopped there to feed my mules close to the store.
Q. Which way were they going?
A. They were going a west course.
Q. Did you speak to them?
A. Yes, sir.
Q. What passed between you?
A. There was several of us in the crowd I was with, and they asked the way to Sandbois.
Q. Were they going towards Sandbois?
A. Yes, sir.
Q. Did they say anything else to you except to inquire the way to Sandbois?
A. They were inquiring the way to Sandbois; they never said where they were going or anything about it much. They were inquiring if there was any fur up there, any otters, minks, or any kind of furs they could get.
Q. In the mountains?
A. Yes, sir; they were inquiring about hunting, and about the game up there.
Q. How long did they talk to you?
A. They were talking to some other parties pretty near all the time.
Q. How long were they talking to the crowd?
A. A few minutes; as well as I recollect, about 5 minutes.
Q. They were travelling towards the Sandbois?
A. Yes, sir.
Q. How far do you live from the Sandbois Mountain?
A. I live about a mile of the mountain.
Q. How far from Brazile station do you live?
A. About 30 miles.
Q. This was about 30 miles from your place?
A. Yes, sir.
46 Q. You lived in four miles of the killing—that is, the body was found in the Sandbois Mountain?
A. Yes, sir.
Q. Did you see him any more?
A. I saw him then; I wasn't right close to him, but it looked like the same man, same outfit, passed by my house; I was going up to the house and it looked like them passing by on the 22nd or 23rd, I do not remember exactly.
Q. Going in the same direction?
A. Yes, sir; going a west course.

Q. You took it to be the same outfit?
A. Yes, sir.
Q. Did you notice whether the third man was along at that time?
A. Yes, sir; there was two men and a little boy at that time.
Q. At the other time you saw three and the little boy; the first time?
A. No, sir; just the two men and the little boy.
Q. Do you recognize the defendant as being one of these men?
A. I could not say for certain, because I never paid much attention to the man; it looks like the man.
Q. What kind of a hat was he wearing?
A. I could not tell.
Q. If you have seen the mules and teams since then, where have you seen them?
A. Yes, sir; I have seen them.
Q. Where did you see them?
A. Down here; the team is hitched out here.
Q. In whose possession?
A. Mr. Bickeford's possession.
Q. Is that the same outfit you saw?
A. Yes, sir; it looks like the same outfit; I would think it was the same outfit, to the best of my knowledge.
Q. Did you notice what they had in the wagon?
A. No, sir; I never noticed; I could not say.
Q. Did they have any guns along with them?
A. Yes, sir; one of them was carrying a gun.
Q. Do you remember which one it was?
47 A. It was the oldest one, I think, was carrying the gun.
Q. Who was driving?
A. The other man. There was two men and the little boy; one was driving and the other was carrying the gun.
Q. You think the old man was carrying the gun and the young man was driving the team?
A. Yes, sir; as well as I recollect.
Q. How far do you live from the man named Israel Cooper?
A. About one mile.
Q. That is the Choctaw Indian that was just on the stand?
A. Yes, sir.
A. Are you a white man or a Choctaw?
A. I am a white man.
Q. You think it was about the 22nd or 23rd of December you last saw him?
A. Yes, sir.
Q. When was it this body was found; do you remembe4 about the time?
A. No, sir; I don't remember now; it was three or four or five weeks afterwards; I don't recollect now.
Q. You didn't see the body?
A. No, sir.
Q. Did you live on the road?
A. Yes, sir.
W. Israel Cooper lived a little back from the road?
A. Yes, sir.

Q. Is your house the nearest house to the place where the body was found?

A. Yes, sir; it is the nearest house on the mountain, the road they were travelling.

Q. What kind of a country is it on Sandbois Mountain there?

A. It is a rough country.

Q. No houses up there in the mountains?

A. No, sir.

Cross-examination by Mr. J. C. Byers:

Q. You don't know anything about there being a body there
48 at all, only what somebody told you?

A. They told me it was there as they came by my house; they stopped to warm, and they said they had the body in the wagon; I never looked at it.

Q. You don't know of your own knowledge anything about it, do you?

A. No, sir.

Q. You don't know whether there was a body there or not, do you?

Q. No, sir; all I know is what they said about it.

Q. How many times did you see these parties? You saw them once, you and the crowd together, and they talked to you about five minutes; is that the only time you saw them and had any conversation with them?

A. That is the only time I saw them and talked to them; I took them to be the same parties that went up by the house; I never talked to them then.

Q. How long was that after the first time you had seen them?

A. It was about the 15th when I saw them the first time, and it was about the 22nd or 23rd when they passed along there.

Q. How far were you from them the second time you saw them?

A. About 100 yards.

Q. Are you confident they are the same parties you saw before?

A. It looked like the same outfit, team, and everything; I took it to be.

Q. Did you examine that team closely or just casually?

A. I never paid such close attention, but it was a mule team; small wagon, just like this.

Q. Then you don't know whether it is the same one or not beyond the fact that they looked alike; is that right?

A. To the best of my knowledge they look like the same outfit, and to the best of my knowledge it is the same outfit.

49 Q. Is there any cuts or marks, or any defetcs about it, or anything that way?

A. Nothing in particular.

Q. And you see this old wagon down here, and you simply say it looks like it, do you?

A. It looks right smart like the same one.

Q. What do you mean by right smart; what is the reason you think it looks like it?

A. It is a small wagon.

Q. That is the reason you give; because it looks right smart like it? Were you before the commissioner?

A. Yes, sir.

The DISTRICT ATTORNEY. You didn't notice whether the axletree to the wagon was broken or not?

A. No, sir; I heard them talking about it; I never paid any much attention to it when I seen them the first time. There was some Gipsies there at the same time, and they were speaking about the axle being broken, and I was feeding, and I never paid any particular attention myself.

Mr. BYERS (of counsel for defense). You don't know whose axle was broken, theirs or the Gypsies?

A. It was the Gypsies spoke about it, I think. The Gypsies didn't have any wagon there.

Q. Who was with you at the time you met them and held the conversation?

A. There was a man named Jones and a man named Clay.

Q. Are they here?

A. No, sir.

Q. Do you know what was the subject of the conversation?

A. They were just inquiring of the country and about game; they didn't stay there but a few minutes.

Q. Just where would be a good locality to find game?

A. Yes, sir; about the roads to Sandbois.

Q. Did you notice or pay any attention to the feelings existing
50 between these parties, whether they seemed to be hostile, or didn't you discover anything that directed your attention?

A. I didn't pay much attention to them.

Q. Who was driving the wagon?

A. The young man was driving the wagon.

Q. The old man and the boy were riding in the wagon?

A. No, sir; the old man was walking. He was out there when I seen him.

Q. Were they standing still or moving on?

A. They came up there where we were at and stopped; they didn't stay there but a few minutes, when they started to move on.

Q. When they started to move on did the old man pursue his journey on foot, or get into the wagon?

A. I don't recollect whether he got in or not. He was outside when he was there talking and had the gun on the ground, too.

51 A. T. ECHOLS, having been recalled upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Did you find any handkerchiefs on the deceased?

Answer. Yes, sir.

Q. How many?

A. I would not be positive, but it appears to me like there was two found.

Q. I notice before the commissioner you——

A. I have one in my pocket just like the one that I found. Here [exhibiting a handkerchief] is one just like the one I found.

Q. Did you find any pencil?

A. Yes, sir; a little bit of a piece of a pencil.

Q. Did you find any pencil holder?

A. I would not be sure.

Q. I notice you say before the commissioner two or three pocket handkerchiefs.

A. Yes, sir; there were 2, at any rate.

Cross-examination by Mr. J. C. BYERS:

What complexioned man was the deceased?

A. That is hard to say; he was a man with a dark-brown mustache, and the surface of the skin looked to be very dark.

Q. What color was his hair?

A. He had black hair.

52 JOHN BICKEFORD, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. What is your name?

Answer. John Bickeford.

Q. Where do you live?

A. About three miles from here, in the Cherokee Nation.

Q. Did you know George Bickeford in his lifetime?

A. Yes, sir.

Q. What relation was he of yours?

A. He was a nephew of mine.

Q. When did you last see him alive?

A. Last December.

Q. What time?

A. Along in the fore part of the month, near the middle of the month, I think, when I last saw him.

Q. Where did you see him?

A. I saw him the last time in Fort Smith.

Q. Where was he going?

A. He was going to La Flore; he had been staying at my house for four or five days, probably, and him and I came from my house to town.

Q. Do you know where he came from to your house?

A. He came from Hartshorne, he told me.

Q. He staid at your house three or four days and then left to go to La Flore?

A. Yes, sir.

Q. Where is La Flore?

A. It is down on the Frisco railroad, I believe.

Q. Do you know where it is; have you been there?

A. Yes, sir.

Q. Then you do not believe anything about; you know it, don't you?

A. I don't know just how far it is from here; I think it is

53 60 or 70 miles, probably.

Q. How far is it from Hartshorne, this town over here on the Choctaw road?

A. I don't know, hardly.

Q. He left to go to La Flore, 70 or 60 miles from here?

A. Yes sir.

Q. That is the last you ever saw him?

A. Yes, sir.

Q. Did you see him after he was killed?

A. Yes, sir.

Q. Please state if you are in possession of his property, and if so, how you came to have it, and of what does it consist?

A. I have the team and wagon, and trunk and some of his clothing, and things that was turned over to me by a marshal.

Q. Who turned them over to you?

A. A deputy marshal by the name of Asbell.

Q. When were they turned over to you?

A. I could not hardly tell the time?

Q. Fix about the time.

A. It was either in the last of February or the first of March, I believe.

Q. How long before or after the defendant had his trial before the commissioner?

A. It was before.

Q. How long before?

A. A few days, if I am not mistaken now; I might be mistaken about that.

Q. I don't care whether you are mistaken about it or not; just give me your best judgment about it.

A. He might have been before the commissioner once before I got these things, but he come before the commissioner afterwards also; because I saw him, I know, afterwards in the commissioner's office.

Q. He was before the commissioner here on the 15th day of Feb-
54 ruary; was it as early as that? You have said it was sometime in March. He was before the commissioner on the 15th day of February. I do not see any other note in the papers of his having been before the commissioner but once. The information was filed against him on the fourth of February, and on the 15th day of February he was before the commissioner. Was it that early you had these things turned over to you, or afterwards?

A. I don't remember; I don't remember any date. There is no way of fixing any date.

Q. What did you do with the things you got as turned over to you as being your nephew's property?

A. I took them to my house.

Q. Are they at your house now?

A. A part of them is at my house and a part of them is here. The things that I know belonged to my nephew are right out here on the street.

Q. You ought to have brought everything; I told you to bring everything. What didn't you bring?

A. A lot of old steel traps, som' old bed clothes, a piece of an old tent.

Q. What did you bring with you?

A. Two trunks and the contents of them; a wagon and team.

Q. What sort of a team?

A. A span of mules.

Q. Anything in the trunks?

A. Yes, sir.

Q. What is in the trunks?

A. I couldn't hardly tell you all that is in the trunks. Some clothing in there, and a lot of old papers and plunder.

Q. You say you brought what you knew to belong to your brother, or your nephew, I mean?

A. He had them at my house; one of the mules he had at my house about a year ago now. The other he never had at my house; he traded for it here in Fort Smith, after he left my house.

55 Q. He had one of them at your house about a year ago; how do you know that he traded the other one here; were you with him?

A. No, sir; I didn't see the mules, but there has been a young man working for me for over a year that saw it.

Q. Never mind that. He had another mule with this one when he was at your house, did he?

A. Yes, sir; he had a mule and a pair of ponies when he was at my house.

Q. Did he have any wagon?

A. Yes, sir; he had the same wagon and the same harness.

Q. Did he have anything else that you know?

A. He had one of these trunks at my house. The other trunk he didn't have. I did not see it, if he had it.

Q. Is there anything but the trunks that you identify as belonging to your nephew?

A. He had a pair of sheep shears, and they was in one of the trunks, that he sheared my mules with, that I know, and his overcoat is there among the things.

Q. Did you identify his overcoat?

A. Yes, sir.

Q. Where did you get his overcoat?

A. I got it from a black man named Andy Petis, who brought it in here.

Q. Is that the old colored man with the gray hair?

A. Yes, sir.

Q. Where does he live?

A. He lived at that time right over here in Poteau bottom, a mile or a mile and half from here. He lived on the same farm, I think, that this man was camped on when he was arrested.

Q. Do you know the defendant?

A. I never saw him until I saw him here since this thing occurred.

56 Q. Let me see if I understand you; these things, the goods that you speak of, except the overcoat, the mules, wagons, and things you identify as belonging to your nephew, and they were turned over to you by Mr. Asbell, a deputy marshal?

A. Yes, sir.

Q. You identify them as belong' to your nephew?

A. Yes, sir.

Q. Where are these things now, the trunks, the wagon, and mules?

A. They are right out here on the street.

Q. In front of the court-house?

A. Yes, sir.

Q. You brought them here?

A. Yes, sir.

Q. The same ones that are in front of the court-house that the Government witnesses have spoken about are the mules that you refer to?

A. Yes, sir.

Q. How old a man was your nephew?

A. He was somewhere between 30 and 35 years old; I think probably about 32 years old.

Q. Describe him.

A. He was a low, heavy-set, square-built man; a man of about my height, probably not hardly so tall.

Q. How would he compare with you in size?

A. I think he was about my size; very little difference.

Q. What was his complexion?

A. Rather dark complected, black hair, not exactly black, but it was dark, dark brown hair, and dark gray eyes, I believe.

Q. Did he have any beard?

A. Yes, sir; but he kept it shaved off, except his mustache.

Q. What kind of mustache?

A. He had a mustache that was rather black, dark color.

Q. Where is that overcoat now?

A. It is out here in the wagon.

Q. You didn't see the body?

A. No, sir; it had been buried several days before I heard anything about it; I didn't go to see it.

57 Cross-examination by Mr. J. C. BYERS:

Q. You didn't see the body, and you don't know of your own knowledge whether your nephew is dead or alive?

A. All the knowledge I have is by the description of the things that were on his person when he was killed.

Q. He had been staying with you some, I believe, before he had gone away?

A. Yes, sir.

Q. You say he had one of these mules when he left?

A. He had one of them a year ago at my house. One of these mules and a wagon and two ponies, and a camping outfit of plunder.

Q. The last time that he was at your house did he have one of these mules with him?

A. No, sir; he had nothing with him except his clothing that was on his back. He had this overcoat on him when he was at my house the last time I saw him.

Q. How long did he stay at your house the last time that he was there?

A. Probably 4 or 5 days; I don't remember.

Q. He come without a team?

A. Yes, sir; he come to my house on foot.

Q. And left on foot?

A. Yes, sir; he told me that he had left his team with an old Frenchman at Hartshorne, who would meet him at La Flore on Friday.

Q. Now, then, this property that was turned over to you by Mr. Asbell—have you given the district attorney a full list of it all?

A. As near as I can. There is a lot of stuff there that I could not tel' you any more than the man in the moon what it was; it is a g'neral mass of old plunder, camping outfit; and there is a lot of old
58 steel traps for one thing, and there is a bed and cooking ut'nsils that I didn't bring over here.

Q. How many trunks were there?

A. There is two trunks, and a box that had some cooking traps in it.

Q. How many beds, if any?

A. There was one bed; a common straw tick.

Q. How many blankets were there?

A. I could not tell you; I didn't count them.

Q. How many quilts were there?

A. I didn't count them, either.

Q. How many feather bolsters were there?

A. I don't know; I didn't count them; I don't believe I saw but one; I don't remember but one.

Q. Did you get the shotgun?

A. Yes, sir.

Q. How many chairs did you get?

A. There was two or three chairs.

Q. How many axes?

A. One.

Q. Did you get a lantern?

A. Yes, sir.

Q. Did you get a skillet?

A. I think probably there might have been more than one skillet among the outfit.

Q. Did you get a water bucket?

A. Yes, sir.

Q. How many steel traps did you get, do you know?

A. I didn't count them.

Q. Was there as many as fifteen or sixteen?

A. It looks like there might be; there was quite a pile of them there all tangled up.

Q. Did you get one steam pot?

A. I don't know whether you would call it a steam pot or what.

Q. Cooking vessel; a stove pot?

A. It is a stove kettle.

Q. Did you get a set of knives and forks?

59 A. I don't think there was; there was some knives and forks there, but I don't think there was many.

Q. Did you get a set of plates?

A. I did not see a set of plates.

Q. A set of cups and saucers?

A. No, sir; there might be one or two.

Q. A set of spoons?

A. There was some spoons.

Q. Set of teaspoons, were they, or tablespoons? There was one bread pan?

A. Yes, sir; there is a bread pan or a dish pan or something of the kind.

Q. Any cloth, any pieces of domestic?

A. I think there is a piece probably in one of his trunks.

Q. Was there a cooper's adz?

A. Yes, sir.

Q. Was there any ropes?

A. Yes, sir; tie ropes, lariats, or something like that.

Q. Whereabouts are al' of these things?

A. They are in the barn loft at my house, except what I have got here with me; I brought here the two trunks and shotgun and wagon and team, and all of that old plunder is in my barn loft; I didn't have room for it in the house and I piled it up in the loft.

Q. Did you make a schedule of the things you got?

A. No, sir.

Q. There is a great many things here I haven't read to you; a hammer, pinchers, and things of that sort.

A. There is a pair of horse pinchers there.

Q. Those are the things that Asbell turned over to you as being the property of your nephew, is it?

A. They were all turned over to me, but I could not tell you
60 whether they all belobged to my nephew or not. Some of these things I do know belonged to him, as a matter of fact.

Q. You don't know whether they belonged to your nephew or to somebody else, do you?

A. I know a portion of it belonged to him.

Q. How do you know it?

A. Because he had it there with him, and told me that it was his.

Q. How do you know that he did not sell it, or dispose of it?

A. He might have done that after he left my house.

Q. Then you do not know really whether it was your nephew's property or somebody else's at that time? At the time you received it from the marshal you don't know whether it was your nephew's property or somebody else's, of your own knowledge?

A. I, of course, could not say to that.

Q. You have been holding that property, have you, for further identification here at court, or have you appropriated it to your own use?

A. No, sir.

Q. You have not sold any of it, have you?

A. No, sir.

Q. What became of the defendant's boy afterwards?

A. His boy went with me and staid at my house a little over three months, and then he wanted to go to see his mother, he said; wanted to go to see if he could find her.

Q. His boy was a witness here before the commissioner?

A. Yes, sir; I think so.

The DISTRICT ATTORNEY. No; he wasn't.

Mr. BYERS (of counsel for defense). The boy was subpœnaed, was he not?

A. I think so.

Q. He drew some witness fees here, did he not?

A. Yes, sir.
Q. You got that, did you not?
A. I got a part of it.
61 Q. You appropriated that to your own use, did you not?
A. Yes, sir.
Q. You never gave it back to the boy did you?
A. I gave him a part of it.
Q. What part did you give him?
A. Something near half of it.
Q. You got ten dollars, did you not, that belonged to the boy?
A. Yes, sir.
Q. How much did you give him?
A. About 5 dollars.
Q. When did you give it to him?
A. At different time', and part of it I gave it to him before he got it.
Q. How *a*was that?
A. We were going regularly every day back and forth from my house for one thing, and I paid *g*is ferr*y*age twice a day; he told me if I would pay his ferr*y*age he would give it back to me, and I paid his ferr*y*age and gave him money to get his provisions with here in town.
Q. Did you buy five dollars' worth?
A. And then I gave him a dollar at one time, and then at another time I remember that I gave him a dollar, and at another time I gave him a half a dollar that I recollect, and I gave him a half a dollar when he started to see his mother—tried to find her.
Q. That is three dollars; that is all you gave him, is it?
A. That is all except what I gave him at different times to get something to eat with and to pay his ferr*y*age.
Q. How many times did you give him money to get something to eat with?
A. Three or four times.
Q. How much did you give him?
A. 25 cents at a time—paid for what he bought.
Q. The boy has repeatedly asked you for the money, has he not?
62 *Q*. He asked me for it once or twice.
Q. What answer did you give him?
A. I told him that I thought I ought to have that for feeding him for three months.
Q. You are going to make a spec*k* off of it?
A. Will you take care of him for three months for five dollars? There is quite a spec*k* in that.
Q. You say your nephew was about 32 years of age?
A. I thought he was about that age; I don't know his age exactly.
Q. How was he connected to you; was he your brother's son?
A. Yes, sir; he was a brother's son.
Q. You say that he was dark complected, dark brown hair?
A. Yes, sir.
Q. What color was his eyes?
A. Gray, I think; hazel eyes.
Q. What would he weigh, do you know?
A. He would weigh about 160 or 65 pounds.

63 ANDREW PETIS, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Your name is Andrew Petis?

Answer. Yes, sir.

Q. Where do you live?

A. I live in the Pottawatomie country now.

Q. Where did you live last year?

A. I lived across the Boteau, on Mr. Keiser's place.

Q. How far from here?

A. About three miles, I reckon.

Q. Do you know the defendant?

A. Yes, sir.

Q. When did you first know him?

A. I don't know; I think it was last June that he came over there and started a garden for Mr. La Flore, about three-quarters of a mile from me, sometime last summer.

Q. Started a garden for Mr. La Flore?

A. Yes, sir.

Q. Did he have any team or anything of that kind?

A. When he came in there he had a yoke of cattle and a wagon.

Q. Do you know what he did with it?

A. One of his steers taken sick and died, and he sold the other to Mr. Campbell La Flore.

Q. What did he do with the wagon?

A. He hired Mr. Atkins to fetch the wagon to town; he had no team, you know, and he fetched it down to have it fixed.

Q. Do you know where the wagon is now?

A. No, sir; I don't know where it is.

Q. You don't know what shop he took it to?

A. No, sir.

64 He told you that he sent it over to some shop to have it fixed, and you don't know what shop?

A. No, sir.

Q. Did you see him when he left that country?

A. Yes, sir; I went up to McAlester, a witness there. Mr. Grawson took me up there, and he came on the platform, and I was standing there one morning, and he walked up to me and 'e asked me if I knew him, and I told him yes; and he asked me that, and I said yes; and I asked him how he got up there, and he told me that he walked.

Q. McAlester is the end of the Choctaw railroad?

A. Yes, sir.

Q. Hartshorne is on the Choctaw road?

A. Yes, sir.

The COURT. You met him at the depot?

A. At the court-house, on the platform of the court-house.

The DISTRICT ATTORNEY. Do you know when it was that he left your country and went up to McAlester, exactly?

A. No, sir; I do not know exactly when he left.

Q. Do you know whether he owned any overcoat or not; did you ever see him with an overcoat?

A. No, sir; I did not.

Q. Did you see him any more after you saw him at McAlester?

A. I never saw him any more until two or three days before that big snow out there.

Q. Tow or three days before the last big snow?

A. Yes, sir; the biggest snow we had last winter.

Q. Was it before or after the big snow?

A. Two or three days before that big snow was.

Q. Do you remember what month that was in?

A. No, sir; I don't. I think it was in February; I might be mistaken about it being in that month.

65 Q. That was the snow last winter?

A. Yes, sir.

Q. We only had one snow, didn't we?

A. We had two or three snows, but I am speaking of the big snow.

Q. Whenever it was it, was two or three days before that you saw him. Where was he?

A. He came there to my house, he did, driving that team up there to my house.

Q. What team?

A. That mule team standing out here in front of the court-house.

Q. The one that Mr. Bickeford brought here?

A. Yes, sir.

Q. Was there anybody in the wagonn with him?

A. His little boy was with him.

Q. Did he have anything in the wagon?

A. I didn't go to his wagon then. I had a cross dog, and I made up a little fire when he came and he warmed, and when he come out I looked at the mules and went back in the house and asked him if he would trade them, and he said he would; he said he would trade anything he had got; he didn't marry to anything. I told him I would give him a trade for the mules if he would come up right. I wanted to go West, and he asked me what I had, and I told him I had a fine yoke of cattle.

Q. That was the first time you saw him, was it?

A. Yes, sir; that was the first time I saw him after he left McAlester.

Q. That is right over here across the river?

A. Yes, sir; about three miles from here. I asked him how did he make a raise of them mules, and he said where he come from—I don't remember where he come from—he had a debt coming to him from there, and it had run into twenty dollars interest, and he said he had written for his money, and the gentleman whoever owed him told him he would send him the principal if he would knock off the interest, he told me, and he said he gave $110.00 for the outfit.

66

Q. Did he say who he got them from?

A. No, sir; he didn't say who he got them from at all.

Q. Did you make the trade?

A. And he asked me if there was any open house, and I told him there was at Mr. Keiser's place. He wanted some hands to pick cotton, and I think he went up to a man named Tubbs, right above me, and then went to Mr. Johnson's and staid all night, and the next morning he came over to Mr. Keiser's place.

Q. Did you see him any more after that?

A. Yes, sir; I saw him. I picked cotton in the same field.

Q. Did you see the wagon?

A. Yes, sir.

Q. Did you see anything in it?

A. I never seen anything in the wagon. I was at the house a time or two after he moved, and I seen 2 or 3 trunks there; two trunks, I believe.

Q. Did the wagon have a cover on it?

A. It had some kind of a wagon sheet on it.

Q. You could not tell whether there was anything in it or not?

A. No, sir; not when it was at my house there before he unloaded it.

Q. Did he have an overcoat? Do you know anything about that?

A. I came here to town one day, and I was here at Mr. Keiser's store, and I met him there; he went on home as I did, and it was very cold, and he had an overcoat on, and he had his hands in his pocket that way. I looked at him; it was very cold, and he had an overcoat on.

By Mr. BYERS:

Q. When was that?

A. I don't know exactly; it was before the big snow.

67 Q. That was before he came back from McAlester, was it not?

A. After I came back, and after he came back, too.

The DISTRICT ATTORNEY. You were going back from town with him, and he had on an overcoat?

A. Yes, sir.

Q. Did you go to town with him?

A. No, sir; I didn't go with him; I went back from town with him.

Q. Did you ever see that overcoat afterwards?

A. Yes, sir; the little boy——

Q. What little boy?

A. The defendant's little boy, and Mr. Johnson's little boy, they moved their things; they made two loads, and I went down to see if they shut up the house——

Q. Was that after he was arrested?

A. Yes, sir; I asked the little boy where his father was, and he said he had arrested him. Mr. Johnson moved the things up to his house; made two loads; made the last load in the morning, and I went down betwixt eleven and twelve, I believe, and got the overcoat. The little boy left the overcoat there. I went and took the coat to my house.

Q. Is this the coat he had on?

A. Yes, sir.

Q. What did you do with it?

A. I took it to my house. They was picking cotton, and the little boy was in the wagon, and I hollered two or three times—they could not hear me; I was about 300 yards from them, I reckon—to let him know that I had his pa's overcoat, and they could not hear me; and when I was subpœnaed I brought it to town. I fetched it down and gave it to you.

Q. This is the coat?

A. Yes, sir; that is it.

Q. You brought it here and gave it to me after the defendant was arrested?

A. I was attending court when I fetched it and gave it to you.

68 Q. How long after he came back there the last time was it until he was arrested?

A. I don't know, sir; I believe it must have been about 10 days.

Q. About 10 days after he got there he was arrested?

A. Yes, sir; according to my recollection.

Q. That is all you know about it, is it?

A. Yes, sir; I believe that is all I know about it.

Q. You had never seen Mr. Bickeford, the man who is said to have been killed?

A. No, sir; I never saw him at all.

Q. You didn't see these trunks until after they were unloaded?

A. No, sir.

Q. You say this wagon out here and these mules are the same ones he brought to your house?

A. Yes, sir; same ones.

Cross-examination by Mr. J. C. BYERS: When did you first see the defendant?

Q. When he first come in the country; I could not exactly know the day that he came in there, but he came up by my house to make a garden on Mr. La Flore's place.

Q. About what time was it?

A. It was late; everybody has planted; the ground was getting very hard. It was last summer.

Q. Going to make garden for who?

A. Campbell La Flore.

Q. Did you have any conversation with him at that time?

A. No, sir; I didn't have any particular, only I would go to his house Sundays and stay and talk with him.

Q. How far did he live from you?

A. About three-quarters of a mile.

Q. You say you went to his house and would stay with him?

69 A. I went there most every Sunday and set down and talked to him.

Q. What did his family consist of; you say that he kept house there?

A. I don't know, sir, how much family he had. He had a wife and a little boy.

Q. How long did they live there?

A. I do not think they lived there over two months, two or three.

Q. What became of their garden; they didn't make it, did they?

A. They turned it over to Mr. Phelix La Flore; he was doing the business on the farm for his father.

Q. You say that one of his oxen died there, and that he sold the other to La Flore?

A. Yes, sir; one of them died, and he skinned it right there close to his house; and he had a red and white one, and he sold the white one to Mr. Campbell La Flore.

Q. Did you see him sell it to him?

A. I saw the steer afterwards, right at Mr. La Flore's.

Q. I guess you do not understand my question; I asked you how you knew that he sold it to him.

A. Phelix told 'e that he had sold it to him.

Q. That is the way you know it?

A. Yes, sir.

Q. Is that what you are swearing to?

A. I know that Mr. Phelix La Flore wouldn't have him there if he hadn't bought him.

Q. Is that the way you have been testifying here, to what somebody has told you?

A. No, sir.

Q. Answer the questions, then, as to what you know, and not as to what you have heard.

A. The reason I told you that——

Q. You don't know anything about it except what he told you?

A. No, sir.

Q. Do you propose to swear to it?

70 A. I know that he did sell it to Mr. La Flore; I know that he was owing him, and that was all the way that he had to pay it.

Q. Did you see him sell it?

A. No, sir.

Q. The' you don't kn'w anything about it, only what Mr. La Flore told you?

A. No, sir.

Q. We have got you down to one thing you know, and that is you don't know whether he sold it to him or not.

A. No, sir.

Q. Where did he go to when he left there?

A. He came here in town awhile.

Q. How do you know that he did?

A. He told me that he was going to come in town.

Q. You know that he came in town because he told you so?

A. Yes, sir.

Q. How long did he stay here; do you know?

A. No, sir; I do not.

Q. Where did you next see him at after he left the Poteau bottom?

A. I next seen him at McAlester.

Q. What did he have with him when you saw him at McAlester?

A. Had nothing only the clothes on his back.

Q. Was the boy with him?

A. Yes, sir.

Q. Where was his wife?

A. They parted; she was down here somewheres.

Q. Did they part when they lived in the Le Flore place?

A. Yes, sir.

Q. When he left over there, do you know how he left; did he go on foot or did he go on the train?

A. He told me that he walked up.

Q. He told you that he walked to McAlester?

A. Yes, sir.

Q. Did he tell you what he was doing at McAlester?

71 A. I believe he said he was living in a tent, working at some coal.

Q. How long was it from that time until he came down here again driving this team?

A. I don't know exactly; I never kept any time.

Q. Fix it as near as you can?

A. I could not testify to that at all; I didn't have to pay any attention to it.

Q. You can testify very glibly to something that somebody else told you; was it two months or three months; fix it as near as you can?

A. I would not say how long it was.

Q. A week. Make a guess at it?

A. I might guess on it wrong, so I won't make any guess.

Q. Was it six months?

A. No, sir; it could not have been that. It was something less then that.

Q. Fix it as near as you can?

A. I know it was not late in the season; watermelons wasn't ripe.

Q. You have got the watermelon season down all right. After the watermelon season when he came back?

A. Yes, sir; it was in the winter.

Q. It was before that big snow, sometime?

A. Yes, sir; three or four days.

Q. Wasn't it several weeks before the snowstorm?

A. No, sir; it was only two or three days that he was there before the big snow fell.

Q. How far from the time that the big snow fell, until he was arrested?

A. The snow was all melted off when he was arrested.

Q. That would make it some several days afterwards?

A. It would make it about 10 days.

Q. A great deal over 10 days?

72 A. No, sir; because I was picking cotton myself, and he was picking too for Mr. Keiser.

Q. How long did the first snow lay on the ground, do you know?

A. No, sir; I don't know.

Q. Was it all gone before the second or big snow that you speak of fell?

A. No, sir; the big snow was gone before any more fell.

Q. At what time did he want to trade you these mules, or did you want to trade him these oxen for the mules?

A. I never kept any account; I know it was two or three days after the big snow fell.

Q. Where did that conversation occur; at your house?

A. Yes, sir; right in my house.

Q. Where did he have the mules at that time?

A. Standing out in the lot to the wagon.

Q. Did he propose it to you, or you to him?

A. I asked him how he made a rise of them; I had a fine yoke of cattle that I would like to trade, and he said that he would trade anything that he had; he wasn't married to nothing.

Q. Who heard him make that statement?
A. My wife was setting there and she heard it.
Q. She is not here, is she?
A. No, sir; you can mighty easy get her here.
Q. You proposed to trade him the oxen for the mules, and he said that he would trade anything, that he wasn't married to anything?
A. Yes, sir; trade anything that he had.
Q. How does it come you didn't trade?
A. I don't know sir—the reason I didn't trade, my wife she was setting there, and my wife says, she looked around at me, and after he
73 was gone she said "You don't know how that man came by them mules."
Q. That is the reason you didn't trade?
A. No, sir.
Q. You say that she didn't say that until after he had gone?
A. No, sir.
Q. What is the reason you didn't trade right then and there?
A. Because my wife works with the steers, and I wasn't going to trade without she was willing.
Q. What did you propose to trade to him for at all, if you could not trade without her consent?
A. Because I was going west, and I would rather drive mules than steers.
Q. Did any such conversation as that ever occur at all?
A. Yes, sir.
Q. Haven't you got that there idea into your head since you have been subpœnaed here as a witness?
A. No, sir.
Q. You are sure that occur'ed?
A. Yes, sir.
Q. You are sure you proposed to trade with him?
A. Yes, sir.
Q. Your wife told you that you could not trade, that he may have stolen them?
A. She didn't say that he had stolen them; she said we didn't know how he got them.
Q. That is awful fishy.
The DISTRICT ATTORNEY. I submit that is not right.
The COURT. No; that is not professional.
Mr. BYERS. (Of counsel for defense.) When did you see him next?
A. At Mr. Keiser's.
Q. When was that?
A. That was after that big snow had melted off.
Q. How long afterwards, about?
A. About 10 days afterward, I reckon.
74 Q. That would make it about 20 days from the time that he came back there until he was gone?
A. No, sir; it would not make 20 days.
The DISTRICT ATTORNEY. He has only testified to 10 days.
Mr. BYERS. (Of counsel for defense.) How do you fix it was only 10 days from the time that he came back there until he was arrested?

A. Because it snowed and I had cotton to gather, and I was waiting for the snow to go away so I could pick it.

Q. Did you see him every day?

A. I didn't see him every day; I saw him in the cotton patch, him and the little boy picking cotton.

Q. He told you that he gave $110 for the outfit?

A. Yes, sir; he told me that for a fact.

Q. Did he tell you where he got it?

A. No, sir.

Q. Why didn't you ask him where he got it! didn't he tell you that he gave $125 for it?

A. No, sir; he said $110.00.

Q. Did he tell you what he paid for them with?

A. He said a man there owed him, and he had sent for his money, and he had a $100.00 note.

Q. Did he tell you who he bought them of?

A. No, sir.

Q. Why didn't you ask him who he bought them of?

A. A. I quizzed him as far as I had a right to go.

Q. Did you have any right to quizz him at all?

A. I knew that he made a considerable rise from the time that he was gone.

Q. Why didn't you make him show a bill of sale?

A. If I had traded with him I would have asked for the bill of sale.

75 JOHN NEVE, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Where did you live about Christmas time?

A. I lived at Wilburton, Choctaw Nation, about 71 miles from here.

Q. How far is Wilburton from Hartshorne?

A. 16 miles, I think.

Q. On which side of the Sandbois mountain is Wilburton?

A. It is on the south side.

Q. Which side is Hartshorne?

A. I suppose it is on the south side too.

Q. Both of them on the south side of the mountain?

A. Yes, sir.

Q. Please state if you know the defendant in this case.

A. Yes, sir; I never saw the gentleman until I saw him on Christmas day at Wilburton.

Q. Do you know him now when you see him?

A. Yes, sir.

Q. Where did you see him on Christmas day?

A. He came to my house when I was eating breakfast or dinner, I don't know which it was; I think, though, it was dinner.

Q. Was there anybody with him?

A. His little boy was with him—I supposed it to be his little boy.

Q. You have seen his boy here?

A. Yes, sir.

Q. Is it the same boy?

A. Yes, sir.

Q. How did he come?

A. He came in a wagon, or hack, a spring hack I would call it, with the springs taken off, and a mule team.

Q. Have you ever seen that wagon and team since?

A. Yes, sir.

Q. What was the condition of the wagon?

76 A. The right hand fore wheel, the axle was broken off right near the shoulder, and there had been a stick, a piece of wood of some kind, put in there and fixed on to the axle that had been broken off. He came and asked me if I was prepared to fix his wagon, and to give lodging to his little boy until he could go to Hartshorne, and I told him that I was not.

Q. You told him that you could not?

A. Yes, sir.

Q. What became of him then?

A. He went on and I seen him the next day.

Q. Then he left your house with the team?

A. Yes, sir.

Q. The next day you saw him where?

A. In Wilburton.

Q. Whereabouts?

A. He was there at Mr. Cook's shop.

Q. Who is Mr. Cook?

A. He is a blacksmith.

Q. Did he have his wagon there?

A. Yes, sir.

Q. Do you know what was he doing with it?

A. I suppose he was fixing the axle of it.

Q. That would be the day afterwards?

A. Yes, sir.

Q. Now, I understand you to say it was on Christmas day, you think at noon, if not, at supper, he came to your house with a wagon that had been a spring wagon, with the springs taken off, the front axle was broken near the wheel, had been tied up, and with two mules. Have you seen the wagon and mules since?

A. Yes, sir.

Q. Where?

A. They are in front of the court-house now.

Q. Are they the same that Mr. Bickeford brought here?

A. Yes, sir.

Q. Is it the same wagon?

A. Yes, sir.

Q. Is the axle still broken?

A. No, sir; the broken axle has been taken out and a wooden axle has been put in there.

77 Q. Do you know who put that wooden one in there?

A. Mr. Cook put it in, I think.

Q. If you don't know that of your own knowledge don't state it. Was there anything in the wagon when you saw him?

A. I didn't pay any attention; there was some kind of house plunder, but I could not tell anything about what it was, because I was in a hurry. I never paid any attention to what was in the wagon.

Q. Do you know where the body was found?

A. No, sir; I went off after John Pointer the same day.

Q. You know about where it was found?

A. Yes, sir; what the others told me.

Q. How far is Wilburton from that place?

A. I suppose it is between 10 and 12 miles.

Q. Do you know which way he was going—which way he was travelling?

A. No, sir; I do not; he asked me in regard to trapping grounds, and I supposed that he was going to Little River or Fuschemaline, but I could not tell which; he went down that way from my house.

Q. You don't know where he was going, exactly?

A. No, sir.

Q. No other man with him at that time?

A. No, sir; I never seen anyone with him but the little boy.

Q. What kind of a hat was he wearing?

A. A broad-brimmed white hat.

Q. Would you know the hat if you would see it?

A. Yes, sir; I think I would.

Q. Is the hat I now hand you the hat?

A. Yes, sir; I think that looks like it. I didn't pay but very little attention to the man at the time.

78 Q. He wore a hat similar to this if this is not the hat?

A. Yes, sir.

Q. What time the next day was it that you saw him there at the shop?

A. It must have been somewheres between 11 and 12 o'clock.

Q. You are certain now it was Christmas day you saw him in Wilburton?

A. Yes, sir; the reason I know it was on Christmas day, the next day following was when I started off on the pursuit of John Pointer, on the 26th.

Q. Did you arrest Pointer?

A. I went with the parties that went after him; me and Mr. Phllippo followed him and got him located, and Mr. Shellburn arrested him.

Q. Hartshorne is on the Choctaw railroad?

A. Yes, sir.

The COURT. How far is Wilburton from here?

A. 71 miles, I believe, if I am not mistaken.

Cross-examination by Mr. J. C. BYERS:

Q. Whereabouts do you live?

A. At Wilburton.

Q. How long have you lived there?

A. About 3 years.

Q. What occupation did you follow at that time?

A. I was a blacksmith; that was my occupation before then, and I went to work during Christmas week, running a little stand for the Grady Trading Company.

Q. You spoke of his going to stay all night; have you got a family there?

A. Yes, sir.

Q. Are you a deputy marshal or an officer?

A. No, sir; I am not.

79 Q. You spoke about going to arrest Pointer; I thought perhaps you were a deputy marshal?

A. No, sir; the people suggested the plan, and there was no officer in the country that could be got until the next day at 11 o'clock, and they said that some of us ought to make up some way to go after him, and so Mr. Phlippo and me followed him and traced him on to McAlester.

Q. What time of day was it that he came to your house?

A. I am not able to say whether it was breakfast or dinner; it was while I was eating at my table, either dinner or breakfast, and I can not say which one it was. I paid no attention at that time.

Q. It was on Christmas day?

A. Yes, sir.

Q. There was just him and his son?

A. That is all that I seen with him; yes, sir.

Q. Did he come into the house or call you out?

A. He came to the door and rapped on the door, and I got up and opened the door and asked him in; and he said, No; he was in a hurry; and he called me out and I went out with him and went to his wagon and looked at his wagon, to see if I could fix it.

Q. What was it he said about wanting to let the boy stay there?

A. He said he wanted to get a place where some one would keep his mules and wagon, and wanted his axle fixed while he was gone, and he said he wanted lodging for his little boy.

Q. Did he tell you where he was going?

A. He said he was going to Hartshorne.

Q. Did he say how long he expected to be gone?

A. He said he would be back the next day.

Q. I believe you say he asked you something about a trapping country?

A. Yes, sir.

80 Q. Do you know where he went to when he left you?

A. He went on down to the other end of town when he left me; I don't know where he went to from there on, because I wasn't there when he left.

Q. I believe you say Mr. Cook fixed his wagon?

A. Yes, sir; Mr. Cook's shop was there and I walked by there several times when he was fixing the wagon.

Q. You identify this wagon as being the same one that was up there?

A. Yes, sir.

Q. Did you pay sufficient attention to the mules to identify them as being the particular mules?

A. I always, generally, if a man, a stranger in the country, drives up with a team, I notice the team; I can generally always tell if I see a team tell if I see it again.

Q. You did not look for a brand?

A. No, sir.

Q. You identified them from general observation. I believe you didn't notice what was there in the wagon, the plunder?

A. I never looked in the wagon to see what it had in it. The wagon sheet was shoved back from the first bow on one side, and the little boy was sitting there, and he every once in awhile would turn his head out to between the sheet and the bow.

Q. Did the man say anything to you about selling the wagon or the mules to you?

A. No, sir; not a word.

81 JOSEPH POTETE, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Where do you live?

Answer. At Wilburton, in the Choctaw Nation.

Q. Do you know this defendant?

A. Yes, sir.

Q. Where was the first time you ever saw him?

A. Last Shristmas, about the 25th of December, I believe.

Q. Where?

A. At my house.

Q. Where is that?

A. At Wilburton.

Q. That is in the Choctaw Nation?

A. Yes, sir.

Q. Was there anybody with him?

A. He had a little boy; yes, sir; with him.

Q. Anybody else?

A. No, sir; no one else.

Q. What was his business at your house?

A. He came there to leave a wagon and team and a little boy, and he said he wanted to leave to go to Hartshorne on the train.

Q. What time of day was it?

A. As well as I remember, about 2 o'clock in the evening.

Q. About two o'clock when he came to your house.

A. Yes, sir.

Q. Did he leave the boy and team with you?

A. Yes, sir.

Q. For how long?

A. He came back Saturday about 10 o'clock.

Q. Came back the next day?

A. Yes, sir.

Q. The defendant went off, saying that he was going to Hartshorn' on Friday?

A. Yes, sir.

Q. Did he go off on the train?

A. Yes, sir.

Q. Did you see him get on the train?

A. Yes, sir.

82 Q. The next day he came back?

A. Yes, sir.

Q. About what time?

A. I guess it was about 10 o'clock; somewheres between 10 and 11.

Q. Did you see him when he got off of the train?

A. No, sir; I saw him between the house and the train about 10 or 11 o'clock.

Q. Did he have anything with him?

A. No, sir.

Q. Did he tell you his business at Hartshorne?

A. I think, as well as I remember, he told me he was going after some things he left up there; wanted to have them down there.

Q. Have you seen that wagon and team since that time?

A. Yes, sir.

Q. Where?

A. Out here.

Q. Is this the team in front of the court-house that Mr. Bickeford brought here?

A. Yes, sir.

Q. Do you identify it as being the same?

A. Yes, sir.

Q. What was the condition of the wagon and team at the time when he first came to your house?

A. The end of the thimble had been broke, and he had a pole tied on the end of the axle; just had two poles laid that way, and a pole under the axle and tied together. When he first came to my house he had it tied that way.

Q. Is it in that condition now?

A. No, sir.

Q. Do you know where he got it fixed?

A. Yes, sir.

Q. Where?

A. At the shop there, about 300 yards from my house.

Q. By whom?

A. Mr. Cook.

Q. Do you know what Cook did for it?

A. He put an axle in it; the front axle in the wagon.

Q. What kind of a one?

A. He put it without any thumble on it; a common wooden axle without any thimble on it.

83 Q. How is it now?

A. I think it is in that condition now, as well as I could see.

Q. You know this 'o be the same, do you?

A. Yes, sir.

Q. Did you attend to the mules?

A. Yes, sir; I fed them at the lot while he was gone.

Q. Do you know the defendant's boy?

A. Yes, sir.

Q. Is he here?

A. Yes, sir.

Q. Is it the same boy that was with him?

A. Yes, sir.

Q. Do you know whether there was anything in the wagon or not?

A. I seen some trunks and things in there.

Q. How many trunks did you see in the wagon?

A. I don't remember of noticing but one, but he had a sheet over the wagon; I seen one.

Q. Did you notice anything else in the wagon?

A. I don't know; they had lots of things in the wagon, and had the sheet down over it; I never paid much attention.

Q. When he came back there what became of him on Saturday?

A. He carried the wagon up to the shop, had it fixed, and came back to my house and bought hay, and staid there at my house, about 100 yards.

Q. Camped out?

A. Yes, sir.

Q. How much hay did he get from you?

A. A bale of hay.

Q. What did he pay you for it?

A. Twenty-five cents, I believe; 20 or 25 cents, along there somewhere; I could not say positive. I sold a good deal of hay.

Q. What kind 'f a hat was he wearing at that time?

A. A white hat.

Q. What kind of a one?

84 A. What I would call a Stetson hat, as well as I remember.

Q. Narrow-brim'ed or broad-brimmed?

A. Broad-brimmed.

Q. Do you know where he got that hat?

A. No, sir; I do not.

Q. See if the hat I hand you is the hat?

A. It resembles that.

Q. Whether this be the hat or not, he had a hat like that?

A. Yes, sir.

Q. About the same color and general appearance?

A. Yes, sir.

Q. Did you notice whether he had any overcoat or not?

A. No, sir; I never seen him have any overcoat that I remember seeing.

Q. What became of him after that, do you know? Did you see him on Sunday?

A. He left there Sunday morning up in the day.

Q. Do you know which way he went?

A. He went east.

Q. Towards Fort Smith, coming this way?

A. Yes, sir.

Q. Did he tell you where he was going?

A. He told me he was going over on Fuche, about five miles from where I lived, to trap over there.

Q. Well, do you know whether he went there or not?

A. I never did hear of him being there.

Q. Was there anybody else with him but his boy?

A. No, sir; no one else at all.

Q. No man?

A. Just them two is all that I seen there with the wagon.

Q. Do you know where the body was found?

A. No, sir; I don't; I helped bury the body. They brought it to Wilburton, and they told me where it was found, but I don't know where it was found.

Q. Where was the body brought to?

A. Wilburton.

Q. How long after you saw him?

A. I don't remember; it must have been somewheres near a month.

85 Q. You saw the body, did you?

A. Yes, sir.

Q. Did you notice any wounds upon him?

A. Yes, sir.

Q. How was he wounded?

A. He was shot like he was shot in the back and a small hole right here [indicating in front of neck].

Q. The wound in the ba'k you locate kind of between the shoulders at the lower part of the neck?

A. Yes, sir.

Q. What kind of a place was that? Describe that.

A. It looked like it had been shot with a large rifle; it was a large hole, and the hole in front that came out was a small one.

The COURT. Much smaller than the one behind?

A. Yes, sir; right smart smaller.

Q. Was there any powder burn?

A. It looked like his clothes had been powder-burned; I never took hold of the clothing.

Q. You didn't give it a close examination?

A. No, sir.

Q. Was there anybody there to identify the body?

A. Mr. and Mr. Cook and Mr. Thompson was up there, and they were going to bury him, and they sent for some men to come there and identify him, but I wasn't there when they identified him.

Q. You were not there when the body was identified?

A. No, sir.

Cross-examination by Mr. BYERS:

You say that the wound had the appearance of having been made with a rifle?

A. It had a large hole right back here.

Q. Which place did the bal' enter, the fore part or the back part?

A. It looked li'e it had entered at the back part.

Q. Doesn't the ball make a larger hole at 'ts exit then where it enters?

A. I don't know; it made a right smart of a wound here.

86 Q. Wouldn't that seem to indicate that it entered in front si'e?

A. I don't know how that would be; that is the only way I could describe it.

Q. What makes you conclude that it entered from behind?

A. Because it looked like a bigger place here.

Q. Didn't it tear the clothing some here?

A. I don't know that it tore the clothing; it came out about the neck.

Q. If it had gone in in the neck and made its exit out behind wouldn't it have torn the clothing just the same way?

A. It might have done that.

Q. Wouldn't the clothes be torn just the same way if the discharge had made its exit that way?

A. That is the first time I ever seen a shot; I supposed it would make a larger wound going out then where it went in.

Q. Then that would indicate it went in on the front part?

A. There was a large hole here and one here.

Q. Did I understand you to say you were at the body before it was identified or not?

A. No, sir; I wasn't there.

Q. What time was it that you say the defendant came to your house?

A. It was on Christmas day.

Q. Do you know what time of day it was?

A. About two o'clock, as well as I remember; I don't remember what time it was.

Q. What is your occupation?

A. I am a farmer, and I have got some teams there hauling coal around town.

Q. He left his boy and team with you while he went to town?

A. Yes, sir; to Hartshorne.

Q. Of course you don't know where he w'nt. When did he come back?

A. Saturday, the next day after he went away.

87 Q. How long did he stay there when he came back?

A. He came back and geared up his mules, and left the morning after about 2 or 3 hours by sun.

Q. Did he have any tent or anything?

A. He had a wagon sheet stretched up by the side of the wagon.

Q. How long did he remain in camp there?

A. He camped one evening and night, and left the next morning, I reckon, about 8 or 9 o'clock.

Q. You saw him when he left?

A. Yes, sir; about the time that he left; he was gearing up.

Q. How long was this before the body was found?

A. As well as I remember, it was somewheres near a month; I won't be positive, but I think somewheres near a month.

Q. I believe you say you keep hay and things for sale; are you merchandising?

A. No, sir; I live on the public road, and I sell people hay who are travelling, anybody that comes there and wants to buy hay.

Q. That was the only time you ever saw the defendant, was it?

A. Yes, sir.

Q. You identify these mules and the wagon as being the same as was with the defendant on that occasion?

A. Yes, sir.

Q. He settled his bill with you when he left, did he?

A. Yes, sir.

Redirect examination by the district attorney:

What did he pay you?

A. I think I charged him fifty cents for taking care of the boy,

88 and I think I sold him the hay for 25 cents; I would not be positive. I charged him 50 cents for taking care of the team and the boy while he was gone.

Recross-examination by Mr. J. C. BYERS:

Q. Do you know what his condition of mind was as to whether he seemed to be excited, anxious to get away, or in a hurry, or anything of that sort?

A. I could not say that I noticed anything.

89 JOHN BICKEFORD, having been duly recalled upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Is this coat I now hand you the coat you spoke of in your testimony as your nephew's overcoat?

Answer. Yes, sir; that is it.

Cross-examination by Mr. J. C. BYERS:

Was the coat turned over by the marshal with the other things?

A. No, sir; it wasn't with the other things that the marshal turned over to me, but this nigger brought it and said it was left in the house where the man's things were moved from.

Q. Did you ever see your nephew have that coat?

A. My nephew wore that coat, or one exactly like it, at my house. He wore it over here when he left.

Here court took a recess until 1:30 p. m.

90 AFTERNOON SESSION—1:30 p. m.

URIAH COOK, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. State your name.

Answer. Uriah Cook.

Q. Where do you live?

A. At Wilburton.

Q. What is your business there?

A. I am working at the blacksmith trade and woodwork*m* together.

Q. Do you know this defendant, Lewis Holder?

A. No, sir; I am not acquainted with him.

Q. Never met him?

A. I never got acquainted with him; I never formed any acquaintance with him.

Q. Never met him; never saw him?

A. I saw him once.

Q. Did you do any business for him?

A. I put in an axle in his wagon.

Q. Then you ought to be acquainted with him?

A. Yes, sir; I know the man when I see him.

Q. Where did you first see him?

A. He come to my shop the first time I ever saw him.

Q. When?

A. On Saturday after Christmas last.

Q. That would be the day after Christmas; Christmas was on Friday of last year?

A. Yes, sir.

Q. What was his business there?

A. He come there to get his wagon fixed, wanted an axle put in his wagon.

Q. Did you do it?

A. Yes, sir; I put it in.

91 Q. What was the matter with his axle?

A. It was broken.

Q. What kind of an axle was it that was broken?

A. A wooden axle.

Q. Upon what did the wheels turn?

A. Turned upon a skane (?) made by a common wooden axle; we could not get any skane in town, and he said he would let that run until he got to Fort Smith.

Q. Why did not you use the old skane?

A. It was broke.

Q. You put in a new axle?

A. Yes, sir.

Q. Front or hind axle?

A. Front.

Q. No iron skanes to it?

A. No, sir; I didn't put any on it. I put the nuts on that came off the old skanes on the point of it and then put a hole through it and pinned it so they could not get out.

Q. Have you ever seen that wagon since?

A. Yes, sir.

Q. Where?

A. Hitched out here in front of the court-house.

Q. The wagon that Bickeford brought here?

A. Yes, sir.

Q. Did you see the mules?

A. Yes, sir.

Q. The same wagon and mules that he had at your shop on the day after Christmas?

A. Yes, sir.

Q. In front of this court-house is where you next saw them?

A. Yes, sir.

Q. Do you remember whether the wagon had anything in it or not?

A. Yes, sir; he had a good many steel traps in the wagon when I saw it up there, and it looked like a quilt or two, and a gun, and a trunk, I think, or two, and his bedding.

Q. Have you seen the trunks here out in this wagon?

A. Yes, sir; there is trunks in the wagin, but I could not say whether these are the trunks or not; I never paid much attention to the trunks.

92 Q. What did you charge him for putting in the axle; what did he pay you?

A. I think he paid me, as well as I remember, one dollar.

Q. Was there anybody with him?

A. There was a little boy with him.

Q. Anybody else?

A. No, sir; there wasn't anybody else that I saw.

Q. Did he tell you his name?

A. I don't remember whether he told me his name while he was there. I think, though, he did, but I would not say positive.

Q. Where was he staying while he was at Wilburton, do you know, when he came to your place?

A. He left his little boy down at Mr. Potete's the night before and he went down to Hartshorne. He told me that he had gone down on Friday night, and the boy and the team and wagon staid in Wilburton, at Mr. Potete's. The next Saturday night he went down the road near this man Potete's and camped.

Q. Then what became of him?

A. He came up by the shop Sunday morning and stopped and got a bolt out of the shop and put in some part of his wagon, and I don't know where, and went on from there out on the road. I don't know where he went from there; came this way.

Q. Came this way, you say?

A. Yes, sir; he started this way.

Q. Did he tell you where he was going?

A. He told me the day I fixed the wagon that he was doing down on Brazile—no, not on Brazile, on Fuschemaline, in Fuschemaline bottom, to clear some land for a man down there. He said he thought of clearing some land there, and also trap during the time that he was there. Then he said he was going on through to Fort Smith; that he had a large wagon for repair in the shop, and he would use that wagon
93 and have the little one fixed up with skanes on it right, and use it to haul the traps in.

Q. You say there was nobody with him but his boy?

A. I never saw anybody but the boy.

Q. That was the day after Christmas?

A. Yes, sir; the next day after Christmas. I never saw him on Christmas day at all; I was not at home.

Q. Did he tell you where he had been?

A. Yes, sir; he told me that he had been out in the Sandbois Mountain trapping and hunting.

Q. Did he say whether there was anybody with him or not?

A. He said he had a partner with him but he had left him a week or so before, and he hadn't seen him since.

Q. Did he say where his partner had gone to?

A. No, sir; he did not say. He told me that he hae been trapping in the Sandbois Mountain, and I asked him how it come that him and the little boy was in the mountains alone where there was so many varmi'ts, and he said he had a partner with him.

Q. And he told you that his partner had left him about a week before?

A. Yes, sir.

Q. That was the day after Christmas?

A. Yes, sir.

Q. I believe you say you recognize this wagon as being the same wagon you fixed?

A. Yes, sir.

Q. This defendant here is the same man you worked for?

A. Yes, sir.

Q. What nationality is he, could you tell?

A. No, sir; I didn't have a great deal of talk with him noway.
Q. Is that his boy setting there?
A. Yes, sir.
Q. How old would you take him to be?
A. Well, sir; I don't know; he looks like a boy that might be
94 10, maybe. I would take him to be 9 or 10 years old. That is, the boy that was with him at my place.
Q. He didn't tell you who his partner was?
A. No, sir; he didn't. I never asked him.
Q. Did you have any talk with him about his mules and his wagon?
A. No, sir; I never asked him any questions about his mules and wagon, or anything.
Q. You just simply mended his wagon?
A. Yes, sir; I was doing work for the company, and I was in a hurry to get through as soon as possible.
Q. You asked him the question how he happened to be out theere alone, he and his boy, in the Sandbois Mountains where there were so many varmi'ts?
A. Yes, sir; I asked him if he and the boy were alone in the mountains where there was so many varmits. It is supposed by the most of the people there to be dangerous for a man to stay out there alone; there is danger of varmi'ts.
Q. What kind of varmi'ts?
A. Wolves, bears, panthers, and so on.
Q. They infest these mountains, do they?
A. I don't know that they do; only the talk.
Q. It is considered so?
A. Yes, sir.
Q. Do you know the place where the body was found?
A. No, sir; I do not; I never was on the mountain in my life; I have been but a little over a year in that country.

Cross-examination by Mr. J. C. BYERS:

Q. How long have you been living out at Wilburton?
95 A. I came to Wilburton last February was a year ago.
Q. On the 26th day of last December you say the defendant came to you to have wagon repaired?
A. Yes, sir; the day after Christmas.
Q. What time of day was it that he came?
A. He came to my shop—I guess it was, as well as I remember, somewhere about 10 o'clock.
Q. How long did it take you to repair the wagon?
A. It did not take me a great while. I didn't do anything at it until after dinner; I had so much work, and he wanted me to stop work then and I could not do it, but told him if he could wait until after dinner I would do it. And he said he would unload the wagon and get everything ready; and he was somewhat of a mechanic himself, and perhaps he could help some. I went on about my work and he got everything out of the wagon, and at 12 I finished up, and that evening I finished his wagon. I don't remember exactly how long it was; it wasn't long, for it was not a good job; a very sorry job.

Q. Who all was in the shop during the time you were working for him, do you know?

A. I could not tell you. There was several passing about and some in there drinking some—this hop tea, and like that. That is something I hardly ever notice—men about the shop when I am at work.

Q. Was there anyone in the shop at the time of this conversation to which you allude?

A. I don't remember that there was.

Q. How did this conversation come up? You told the district attorney you didn't get acquainted with people when you first saw
96 them, and afterwards related a dialogue to some extent here.

A. In the first place he wanted to sell me some of his traps, or all of them, and I asked him about the *sings* of game in that country. That is the way the question came up. I asked him about the signs, and he said there was but little; he didn't see the sign of but one bear and but very little beaver signs, and I asked him if he was up in there alone, him and the boy, and that is the way the conversation was raised.

Q. Did he tell you who his former partner was?

A. No, sir; if he did, I don't remember it.

Q. He told you that he had left him about a week before?

A. Yes, sir; sometime about a week, as well as I remember, or probably longer.

Q. Did he say anything about what had become of him?

A. No, sir.

Q. Study a little bit and see if he did not tell you that his partner had left some three weeks before?

A. Well, sir, I don't remember; it seems to me that he said a week; that is the best of my knowledge.

Q. Did he say he was going to abandon the trapping business? What excuse did he offer for selling his traps?

A. He didn't say anything about that, only he just remarked he wanted to sell me springs. He had some old springs in the wagon, and I bought one of them. The wagon, I suppose, probably had been a spring wagon at one time and the springs were taken off, and I bought the broken spring.

Q. Did he offer to sell you the wagon or mules?

A. No, sir; only offered to sell me the springs and traps.

Q. Did he say anything about where he was going to?

97 A. He told me that he was going down on the Fuschemaline bottom; he told me he had an idea he would stop in Fuschemaline bottom and trap and clear some land for a man, and from there he expected to go on to Fort Smith, and that he had a wagon in Fort Smith.

Q. Going down to Fuschemaline bottom to clear some land?

A. He said he had an idea of stopping down on Fuschemaline and clear some land for a man, and trap awhile during the time that he was at work. Didn't say that he was going to do it, or anything of the kind, but said that he had an idea that he would do it.

Q. Where was the boy during this time?

A. He was around the shop, first one place and then another; in the store part of the time.

Q. Then you may state if the boy's father went down to Hartshorne during the time that the wagon was there?

A. I could not say; he said he did; I never saw him go.

Q. When you got your job done where did he go, do you know?

A. He loaded his goods back into the wagon and went down towards Mr. Potete's from where I lived, to camp.

Q. Is that the last you saw of him?

A. No, sir; I saw him the next morning passing by my shop; I never spoke to him though. He sent his little boy up to my house to get into the shop to get a bolt for his wagon, and I was out, and as I came on back my wife told me that she told him to go on down, that the shop wasn't locked, to go in and get the bolt; as I came on home he was driving off, and that is the last I saw of the gentleman until I saw him here.

98 Redirect examination by the DISTRICT ATTORNEY:

What kind of a hat was he wearing, do you know?

A. He was wearing a white hat, tolerable broad-brimmed hat.

Q. Look at this hat——

Mr. BYERS (of counsel for defense). I object to the district attorney going into the transaction when he has examined the witness, and I have cross-examined him, taking him back on new matter that ought to have been introduced when he originally had the witness. He ought to finish with his witness before he turns him over.

The COURT. If either side omits evidence they can call it out afterwards.

The DISTRICT ATTORNEY. Please state if the hat resembled the one I now hand you?

A. Yes, sir; that hat looks something like the one that he was wearing. Of course I could not say that it was; there are so many hats alike; it looks something like it.

99 NOAH FULLSOME, having been duly sworn upon behalf of the Government, was examined by the district attorney and testified as follows, to wit:

Question. What is your name?

Answer. Noah Fullsome.

Q. Where do you live?

A. Sandbois.

Q. How far from Wilburton?

A. About 25 miles.

Q. Do you know where the body of a man named Bickeford was found?

A. No, sir; I didn't know Bickeford.

Q. Did you go to the body that was said to have been Bickeford; did you see it?

A. Yes, sir; They said there was a man found on the mountain and they wanted me to go out——

Mr. BYERS (of counsel for defense). Never mind what was said.

The DISTRICT ATTORNEY. They came to you and wanted you to go out?

A. Yes, sir.

Q. What office did you hold at that time, if any?

A. Deputy constable.
Q. Of what county?
A. For the United States court of the Territory.
Q. Deputy constable for the court at McAlester?
A. Yes, sir; second division.
Q. Who was it came to you and told you about there being a body found and wanted you to go out to it?
A. Joseph Coley.
Q. How far did you live from where the body was found?
A. Somewhere about 11 or 12 miles.
Q. Did you go up to where the body was?
A. Yes, sir; I taken seven men with me and a wagon and went up there.
100 Q. Had there been anybody there before you?
A. Yes, sir; there had been several of them up there to see the dead body.
Q. Before you went?
A. Yes, sir.
Q. What did you do when you got to the dead body?
A. Taken him up and brought him to the top of the hill to the road?
Q. Where did you find the body?
A. We found him in a deep hollow, down in the mountain.
Q. How far from the road?
A. It was about 300 yards, I guess.
Q. Did you have a wagon down to the body?
A. No, sir; we packed him up.
Q. Why didn't you take a wagon down to the body?
A. It was so steep that we couldn't get the wagon down.
Q. What did you do with the body when you took it up there?
A. It was getting very late and we examined around him closely and find just one bullethole in him.
Q. Where did you find that?
A. In the back between his shoulders like; came clear through, and came out here [indicating on front part of the neck.]
Q. Describe that wound behind there. How big a place was it?
A. It was a tolerable large hole in the back; about that big [indicating about inch and a half across].
Q. That is, the bullethole aback here between the shoulders?
A. Yes, sir.
Q. How was his coat?
A. His coat was powder burned all around where the bullet was, where the hole was where the bullet had gone.
Q. What kind of a wound ther' in front?
A. Just simply a small hole that came out of his neck.
Q. About how large?
A. It was just a small hole; about that small, I reckon [indicating about a quarter or half an inch across].
101 Q. You just found one bul'et hole coming out of his neck, or more?
Mr. BYERS (of counsel for defense). Don't lead him.

The WITNESS. There was two holes, it looked like, but so close together you could not tell.

The DISTRICT ATTORNEY. Any other counds on him?

A. No, sir; no other wounds on him.

Q. What kind of a place was he lying in?

A. He was lying right in a right steep gully; there was a little branch run in there, and right on the bank of that little drain there was a kind of a level place, and he was laying on that little level place down in the bottom of the gulch.

Q. How deep a gulch was that?

A. I don't know how deep it was; somewhere about 20 feet, I reck'n, or 30.

Q. Could you see it from the road?

A. No, ssir; you could not see it at all from the road.

Q. Were there trees around it, or how was that?

A. There was some pine trees there and black-jack trees off at a distance.

Q. How far was it to the nearest house?

A. About 4 miles, I think.

Q. Whose house was the nearest?

A. A man by the name of Sorrels lived I think at that place.

Q. That was four miles away?

A. Yes, sir.

Q. What did you do with the body?

A. We thought we would bury him up there on the level, and we seen the letters and the daybook, and we found where he had been at work, and we thought we would go over to Wilburton that night, and I
102 took one of the men with me and sent the other six men back with the body to Sanbois.

Q. You didn't bring the body to Wilburton?

A. No, sir; I did not bring it until I went to Wilburtoj and telegraphed to Hartshorne——

Q. Did you take the body to Sanbois first?

A. Yes, sir.

Q. You went to Wilburton?

A. Yes, sir.

Q. How far is Sanbois from where the body was found?

A. I could not tell you; it is, I guess, about 12 miles and a half.

Q. You sent the body to Sanbois, and you went to Wilburton and telegraphed where?

A. To Hartshorne, asking if there was any one knew a man by the name of George Bickeford, and an answer came back that there was, and he would be up on the train at 9:00 o'clock.

Q. Then what?

A. I waited there until he came——

Q. Who came?

A. The man; I don't know his name; he said he was a shoemaker; him and deputy Ellis came up on the train together.

Q. Deputy marshal?

A. Yes, sir; Deputy Marshal Ellis.

Q. Then what?

A. I turned the letters and the little daybook over to Ellis.

Q. You got them from whom?

A. Coley brought them to me, and the man, that shoemaker, said they thought the body at Wilburton.

Q. They thought it was there and they came there?

A. Yes, sir; I told them I had him taken to Sanbois, and he wanted to know if I would have him brought back to Wilburton so he could go back to Hartshorne to get up more men that would identify him, and I told him I would, and I went back to Sanbois and had him taken over to
103 Wilburton.

Q. Wh'n you had him taken over to Wilburton, then what?

A. I turned him over to the deputy, Ellis.

Q. Was he identified there?

A. There were about four men identified him.

Q. Identified him as who?

A. George Bickeford.

Q. Then you turned him over to whom?

A. Deputy Marshal Ellis.

Q. Did you find a hat at the body?

A. Yes, sir; they brought a hat to me when they brought the let'ers and book.

Q. What kind of a hat was it?

A. It was an old black hat, high crown.

Q. Would you know it if you would see it?

A. Yes, sir; I would know it.

Q. Look at this hat and see if that is it?

A. Yes, sir; that is the hat.

Q. Do you know this defend'nt; did you ever see him?

A. No, sir; I never saw him at al'.

Cross-examination by Mr. J. C. BYERS:

You say you are a deputy constable up there?

A. Yes, sir.

Q. How long have you been a constable?

A. A little over a year.

Q. Did you hold any inquest over the body, or anything?

A. No, sir; we did not exactly hold an inquest over him; we just examined him. There was no notary public or anything near, and it was getting late, too, and we didn't——

104 Q. What did you do with the body in the end; what final disposition did you make of the corpse? Did you do anything at all? Did you bury it or ship it or just leave it where you found it?

A. No, sir; I had him gauled to Sandbois.

Q. What was done with him there?

A. Then took him back over to Wilburton.

Q. Then chat did you do with him?

A. I turned him over to Deputy Marshal Ellis.

Q. Turned the body over to him?

A. Yes, sir.

Q. What did you find on the body?

A. We found a little piece of tobacco, and a few matches in his pocket.

Q. And is that all you found?

A. We found two dollars in money in his hind pants pocket.
Q. What was done with the money, matches, and tobacco?
A. They put the matches and tobacco in his pocket, and the money went to the expenses of hauling him.
Q. How much money was the'e, do you know?
A. Two dollars in silver.
Q. Where did you find the money at?
A. In his pants pocket, away down in here, and he had overalls on, and it was under the overalls.
Q. Was it sewed up in his pants?
A. No, sir; it was in a pocket.
Q. Did you search all of his pockets?
A. Yes, sir; we searched all of his pockets.
Q. You put the tobacco back?
A. Yes, sir.
Q. Afraid he might need that?
A. Yes, sir; no one couldn't use that, and we thought we would let it go with him.
Q. Do you know when the body was found?
105 A. I think it was found about the 29th of January.
Q. How long was it after the body was found that you took charge of it?
A. The next day.
Q. What condition was the body in, with reference to putrefaction or rotting?
A. He had been frozen——
Q. How do you know he had been frozen?
A. His underclothes was wet, and he was laying in a deep hollow where the sun did not strike him much, and there hadn't been a warm day for about a week when he was found, I guess.
Q. That is the reason he was in that state, then?
A. Yes, sir; I guess so.
Q. You never saw this old man, the defendant, out through that country, I suppose, did you?
A. No, sir; I never did see him.
Q. Where was the first time you ever saw him; when you came down here to testify before the commissioner?
A. No, sir; this is the first time I ever saw him. I wasn't before the commissioner.

Redirect examination:

The DISTRICT ATTORNEY. You say you examined the pockets of all the clothing?
A. Yes, sir.
Q. You found some tobacco and matches?
A. Yes, sir.
Q. That is all you found?
A. Yes, sir.
Q. Found no paper, or *bo* notes or anything?
A. No, sir; only jus' those letters that were brought to.
Q. They were found before you got to the body?

A. Yes, sir.
Q. You found no papers or notes of any kind at all?
A. No, sir.

106 HARVEY GILRETH, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. I will get you to state where you lived, and what your business was in December and January, 1891?

Answer. Well, from September up until in February I was stripping coal in Hartshorne. I am a railroad man by trade, and I have followed it fourteen years.

Q. Do you know the defendant?
A. Yes, sir.
Q. Did you know George Bickeford?
A. Yes, sir.
Q. Where did you know them?
A. I knew them at Hartshorne.
Q. What were they doing?

Well, Holder worked awhile there, raising coal, I would not be sure what he worked at, but he worked there somewhere in the mines, in the strip pit, and Bickeford, he stripped coal.

Q. State if they were together while there?
A. No, sir; they did not live together while they were there at all.
Q. Were they in the same camp together?
A. No, sir.
Q. I do not mean in the same tent, but were they at the samp camp?
A. Yes, sir.
Q. When was the last time you saw Bickeford alive?
A. I could not tell you to save my life, but I believe it was in September some time, but I would not say exactly about it.
Q. Where did you last see him?
A. At Hartshorne.
Q. What became of him after that, if you know?
A. Well, I do not know anything about what became of him after that.
Q. Did he leave Hartshorne?
A. Yes, sir; I guess he did; I never seen him after I saw him there.

107 Q. Do you know the occasion of his leaving?
A. Yes, sir; him and a son-in-law of mine had a little scrap.
Q. What was the son-in-law's name?
A. Sloan.
Q. They had what?
A. A fight, you would call it.
Q. Go on, now, and tell all about it.
A. And the last time I saw him they were both on the dodge. I went to Lem Savage's and fixed it up, and while I was gone he disappeared—left—and I never seen him any more. I never heard anything about where he was going; he never told me where he was going.
Q. He never told you where he was going?

Mr. BYERS (of counsel for defense). I object to that.

The COURT. That is entirely competent. It has been decided for 250 years that if a man speaks about where he is going to or what he is going for, that is a competent fact.

The DISTRICT ATTORNEY. He never told you where he was going?

A. No, sir.

Q. Did you know that he was going to leave?

A. No, sir.

Q. How long after he left there did the defendant remain there?

A. I don't remember exactly; he might have staid there as much as two days, and maybe not that long; I don't remember; I did not pay any attention to it, for I didn't ever have any idea of being on the stand telling about it.

Q. You say that he staid there as much, maybe, as two days?

A. Yes, sir; I don't remember exactly.

Q. Did he leave about that time?

A. Yes, sir.

Q. Where did he go to; do you know?

A. All I know is what he told me.

Q. What did he tell you?

108 A. He told me he was going to take off this man Bickeford's team and meet him there at this Wilburton or Silver Lake; we call it Silver Lake in that country.

Q. What was he taking his team away for?

A. They were going off trapping and hunting, is the way that he told me.

Q. I want you to tell all that he said about it.

A. That is the principle part

Q. Just commence and tell it all; how did he come to tell you about it?

A. He came down there in the evening, about night—you know how campers are if you were ever on a railroad—he would come down there, Mr. Holder would, and set down at my camp and set and talk, and he just up and told me that he was going to take the team off; he had contracted at the time or promised to move him down to Silver Lake; and that is the reason that he told me, I reckon.

Q. He told you that he was going to take Bickeford's team?

A. He told me that he was going to take Bickeford's team and meet him at Silver Lake or Wilburton.

Q. Then what did he say they were going to do?

A. Going on a hunting and trapping expedition.

Q. Did he say anything to you as to he come to take Bickeford's team?

A. No, sir.

Q. Did he tell you that he had heard from him or not?

A. No, sir.

Q. Going on a trapping or hunting expedition with who?

A. Bickeford.

Q. Do you know of any arrangements being made between Bickeford and the defendant for the defendant to bring his team to him?

A. No, sir; I do not.

109 Q. How did he know where Bickeford was?
A. I don't know about that.
Q. Did he take the team?
A. Yes, sir.
Q. When did he take it?
A. I don't recollect; it was sometime, though, in December; I don't recollect the exact time, but he takes the team, and he and his little boy and a man named Sam Wilson went off together.
Q. Sam Wilson went with him, did he?
A. Yes, sir.
Q. Is that little boy the one that went with him?
A. Yes, sir.
Q. Did you see anything more of him? Did he ever come back to Hartshorne?
A. I was told that he was back there after that, but I never saw him.
Q. You never saw him any more?
A. No, sir.
Q. If he came back on the train about Christmas you didn't see him?
A. No, sir; I didn't see him at all.
Q. What sort of a team was it that Mr. Bickeford had there?
A. It was a mule team.
Q. What kind of a wagon?
A. A little bit of a wagon; I could not tell you what kind.
Q. Have you seen that wagon and team since?
A. Yes, sir; it is standing right out here now, and the mules, too.
Q. That is the team that Mr. Bickeford has here?
A. Yes, sir; it is the same team.
Q. The same mules and the same wagon?
A. Yes, sir.
Q. Did Mr. Bickeford came in the tent or wagon?
A. In his wagon, and boarded at Jim Lahey's.
Q. Was he a married man or a single man?
A. I don't know about that.
110 Q. He camped in his wagon?
A. Yes, sir; he had no woman with him when he was there.
Q. Did he have a camping outfit?
A. If he did I didn't know it.
Q. Do you know of his having anything in his wagon?
A. Yes, sir; he had bed clothing, and one trunk, I believe.
Q. Have you seen the trunk out here?
A. I seen one trunk; I could not swear that is the same trunk or not, but it looks a great deal like it.
Q. There is one trunk in the wagon like he had?
A. Yes, sir.
Q. Do you know what kind of a hat the defendant wore when he left there?
A. Yes, sir; a white hat, with a rattlesnake band on it.
Q. The defendant?
A. Oh, this is the hat here [indicating] that he wore, or I think it is; it looks like the same hat.

Q. You meant to say the deceased wore a white hate with a rattlesnake skin band at that time?

A. Yes, sir; with fringe around the edge.

Q. This hat here is not the hat, then?

A. No, sir; that is not the hat.

Q. Do you think that hat you have there is the hat that Mr. Holder, the defendant, wore?

A. Yes, sir; that looks exactly like the hat.

Q. Did he say what he was going to do with the team, and why he was taking it?

A. No, sir; he didn't tell me anything about it, only he was going to meet him down there.

Q. Did he make any claims about having bought it, or being his?

A. No, sir; he never said anything to me about its being his.

Q. Told you he was going to take it to Wilburton?

111 A. He said he was going to take the team down and meet him at Wilburton or at Silver Lake, or the lake on Gaines's place, near Wilburton; we call it Silver Lake.

Q. How far is Silver Lake from there; from Wilburton?

A. I do not know exactly; it is about 11 miles.

Q. On the same side of Sandbois Mountain?

A. No, sir.

Q. Where is Wilburton?

A. It is back near the Sandbois Mountain, on the Choctaw road.

Q. Is Wilburton on the same side of the Sandbois Mountain as Hartshorne is?

A. Yes, sir; and Silver Lake is on the Gaines Creek, on the west side of it, and it is on the west side of Wilburton, too.

Q. What direction is Silver Lake from Hartshorne?

A. It is a kind of northeast course.

Q. What direction is Wilburton from Hartshorne?

A. It is a northeast course, Wilburton is.

Q. 10 miles this side of Hartshorne?

A. Yes, sir.

Q. How far is Silver Lake?

A. I don't know exactly; we call it 6 miles down to number three shaft, and it is a little over a mile from there; I don't recollect now.

Q. Silver Lake is kind of between Wilburton and Hartshorne?

A. Yes, sir; right on the wagon road between Wilburton and Hartshorne.

Q. Do you know Bickeford's overcoat?

A. Yes, sir.

Q. See if the overcoat I now hand you is his overcoat.

A. Yes, sir; I believe it is; I think that is the overcoat that he had at that time.

112 Q. Do you know of his having a pair of shears?

A. Yes, sir.

Q. What was he doing with them, do you know?

A. I guess he sheared his mules with them. My boys borrowed them to shear my mules.

Q. Are these shears I now hand you the shears to which you refer?
A. Yes, sir; I think they are.
Q. Did you see anything else in the wagon?
A. There wasn't but one trunk in there that I saw, and that was a sheet-iron-bound trunk. That is all the trunk that I think he owned. He might have had more, but I never seen it, though.
Q. Did you notice whether there was anything in the trunk?
A. No, sir.
Q. Have you seen the trunk since it has been here?
A. No, sir.
Q. Were you familiar with any of his things that he was likely to carry in his trunk?
A. No, sir; unless I saw the clothes that he wore.
Q. You think it was some time in December when these men left Hartshorne?
A. Yes, sir; it was in December sometime, but I don't recollect exactly what time.
Q. If I understand you, Bickeford and your son-in-law had got into a fight, and they were on the dodge—I suppose you mean they were dodging the officers; didn't want to be arrested by the officers of the McAlester court?
A. Yes, sir.
Q. You went up to Mr. Savage?
A. Yes, sir; Lem Savage; and fixed it up.
Q. What office has he got?
A. He is some kind of a commissioner.
Q. Justice of a peace there, is he not?
113 A. Yes, sir; I guess that is what you call it. While I was gone this fellow Bickeford left.
Q. Your son-in-law still remained?
A. Yes, sir; he is here now.
Q. And the other man went off?
A. Yes, sir.
Q. And a short time after he left the defendant went off with this team?
A. He went up to town with the wagon and got it fixed and then went off.
Q. What did he do with it; how did he get it fixed?
A. I don't know exactly what he had fixed, but something on it. He told me that he was going to take it up and have it fixed.
Q. Did you see him when he left?
A. No, sir; not exactly when he left; I saw him a short time before he did leave.
Q. I believe you stated Mr. Wilson went with him?
A. Yes, sir.
Q. Who is Mr. Wilson; what is his business there?
A. He has been railroading for the last three years off and on.
Q. You identify the mules and the wagon, and you think you identify one of the trunks, the overcoat, shears, and the defendant's hat?
A. Yes, sir.
Q. You say the other hat is not the hat that Bickeford wore off?
A. No, sir; it had a rattlesnake band around it; it was a great deal older hat than this is.

Cross-examination by Mr. J. C. BYERS:

What did you work at?

A. I am a railroad man.

Q. What business did you do on the railroad?

A. I am a grader.

Q. What road was you grading at that time?

A. I wasn't grading any at that time; I was working in a strip pit.

114 Q. What is that?

A. Where we strip the dirt off of the coal.

Q. Then you were not railroading at that time at all?

A. No, sir; but I am a railroad man, but when I get off from that I have to go to rustling at something else.

Q. What were the defendant and deceased doing?

A. They were at work there like I was.

Q. How intimately were you acquainted with the man Bickford?

A. I knew him when I saw him; I didn't board where he did; I have got a family, and he boarded there at old man Lehay's.

Q. Do you know anything about his character or reputation as to being a turbulent, reckless man?

The DISTRICT ATTORNEY. I object to that.

Mr. BYERS (of counsel for defense). The defense, as stated Saturday, relies upon the plea of self-defense for justification for the act that was done, and I think in the light of the evidence if I can show what his reputation was in that regard, that it was bad, that it is right and proper from the fact that we will connect it with this fight that led to the killing. I think for that purpose it is competent. And in addition to that we expect to prove here that at the time of the killing that he was in an actual fight with the defendant.

The COURT. You haven't proven anything of that kind.

Mr. BYERS (of counsel for defense). We haven't had time.

The COURT. You can not prove general character until you prove overt acts at the time of the deceased.

Mr. BYERS (of counsel for defense). You say that Mr. Sloan and Bickeford there had trouble?

A. They had a little fight.

115 Q. And that Mr. Bickeford left after that?

A. They were on the dodge, both of them.

Q. Now then, at what time, or how long after Mr. Bickeford left did the defendant here, Mr. Holder, leave?

A. I could not tell you; it wasn't more than a day or two at the furthest.

Q. Wasn't it the next day?

A. I don't think it was; it was not the next day, I know.

Q. You make mention of some conversation you had with him at the camp fire; have you told everything that he said to you on that occasion?

A. I don't know; I think that I have.

Q. Did he say anything about a check he had, and you advised him to keep still about it?

A. He didn't say anything about a check, but he told me that he had some money, and I advised him to look out for himself.

Q. He told you in that conversation he had some money, and you advised him to be careful?

A. Yes, sir; but he didn't say anything about the check.

Q. Did he indicate the amount?

A. I don't remember whether he did or not.

Q. At that time he told you that he was going to take Mr. Bickeford's team and go and meet him; he didn't lay claim to the team at that tim', did he?

A. No, sir; he said he would meet him either at Silver Lake or Wilburton.

Q. He emphasised the fact they were Bickeford's team?

A. Yes, sir; at that time.

Q. Who, if anyone, went away with the defendant at the time that he left?

116 A. I didn't exactly see them start, but my wife did see them start, and saw Mr. Wilson and him and his little boy go off together.

Q. Is that Wilson or Williams?

A. It is Williams; but I always call it Wilson.

Q. When did they start—what time of day?

A. I could not tell you that; I was out; wasn't there.

Q. They started away with this team of Bickeford's, did they?

A. They left there with it.

Q. Do you know anything about a shotgun?

A. I don't know anything about a shotgun only this: Roof Taylor got his shotgun and Holder got Taylor's.

Q. Did they trade?

A. No, sir; I think not.

Q. Taylor has got Holder's and Holder has got Taylor's?

A. Yes, sir.

Q. You know that the shotgun wasn't Bickeford's?

A. Mr. Holder told me; this is all I know about it.

Q. You know that the shotgun wasn't Bickeford's?

A. If he had any gun I never heard him claim it.

Q. He didn't have any gun when he was there with you?

A. No, sir; not that I saw. This is what I would call a muzzle-loading shotgun; you use caps on it.

Q. You say you never saw but one trunk in the wagon?

A. Yes, sir; I never seen but one.

Q. You say there is two trunks in this wagon now?

A. Yes, sir; I never saw but one of them at all before.

Q. You identify the zinc-covered trunk?

A. Sheet iron.

Q. You don't know whose the other one is?

A. No, sir.

117 Q. What in the way of property did the defendant Holder have when he left there; do you know of any?

A. I don't know anything about it.

Q. He told you he had some money and you told him to be careful?

A. Yes, sir.

Q. Did he have any other chattels that you know of?

A. Yes, sir; he had some, but I don't know what they were.

Q. Can you enumerate what he had? Did he have any camping utensils?

A. He didn't have anything I could identify for this reason.

Q. You don't know whether he had any quilts or camping utensils?

A. Yes, sir; he had some, but I could not identify them.

Q. Do you know whether he had any traps or not?

A. No, sir.

Q. What did he stay in?

A. He staid in a little cabin; kind of a little shanty, out there.

Q. Who staid there with him?

A. Little Joe.

Q. Is that all?

A. That is all that staid with him until Mr. Wilson came.

Q. How long before they left?

A. The next day; I believe him and Mr. Wilson went off together.

Q. Were him and Mr. Wilson acquainted with each other, or could you gather from their conversation?

A. I don't know anything about it, for I never asked anything about it.

Redirect examination by the DISTRICT ATTORNEY:

How come he to tell you that he had money?

A. I don't know how that was; he told me he had some.

118 Q. He told you he had some money, but didn't mention about a check?

A. Didn't mention anything about a check; no, sir.

Recross-examination by Mr. BYERS:

Did Mr. Holder tell you that he wanted to give you an order on Mr. Taylor for the gun?

A. Yes, sir; he told me that he would give me an order, but he didn't do it.

119 REBECCA SLOAN, having been duly sworn upon behalf of the Government, was examined by the district attorney, and testified as follows, to wit:

Question. Your name is Rebecca Sloan?

Answer. Yes, sir.

Q. You are the daughter of Henry Gilrith and the wife of James A. Sloan?

A. Yes, sir.

Q. Do you know this defendant, Lewis Holder?

A. Yes, sir.

Q. When did you get acquainted with him?

A. Well, I got acquainted with him along last fall, I don't remember just exactly what time.

Q. Where?

A. At Hartshorne.

Q. Did you know George Bickeford?

A. Yes, sir.

Q. When did you get acquainted with him?

A. I got acquainted with him last fall.
Q. While these men were at Hartshorne where did you live?
A. I was living out south, I reckon you might call, it from Hartshorne.
Q. Living in a house or tent?
A. A tent.
Q. You were camping with your husband?
A. Yes, sir.
Q. What was your husband engaged in?
A. He was keeping a team there on some coal strip, my husband was.
Q. What were the others doing?
A. Mr. Holder, I don't think, was doing anything; if he was I don't know anything about it.
Q. What was Mr. Bickeford doing?
A. He was stripping coal for my husband; running his team.
Q. How would he run his team?
A. With a slick.
120 Q. That is one of these scrapers?
A. Yes, sir; using his mules to the scraper.
Q. What was he doing with the wagon?
A. He wasn't doing anything; just standing out in front of the camp, where he camped in his wagon.
Q. Do you know the overcoat that he wore?
A. Yes, sir.
Q. Examine this coat I now hand you, and see if that is his coat.
A. Yes, sir; that is his overcoat that he wore.
Q. How do you know it?
A. I just know it like you would know anybody that you were well acquainted with.
Q. Do you know what kind of a hat the defendant wore?
A. He wore a black hat.
Q. Have you seen anything else about town here that you identified as Mr. Bickeford's.
A. Yes, sir; he had a shirt; one of the shirts I am satisfied is his shirt.
Q. Where did you find that?
A. In the trunk.
Q. Where did you see the trunk?
A. I seen it here Saturday, when Mr. Bickeford brought the team over.
Q. What makes you confident it is his shirt?
A. It is the same shirt, I am confident; the same shirt that he wore. It looks like it, anyway.
Q. Did you ever do any mending of his clothing, anything of that kind?
A. No, sir; he was there right in our sight all the time.
Q. Was there anything else you found in the trunk?
A. There is a tie and cravat, or whatever you may call it; I am satisfied that is the same one that he had.
Q. Anything else?
A. And the sheep shears.
Q. These things you know?
121 A. Yes, sir; I am confident they are his.
Q. Did you know his mules?
A. Yes, sir.

Q. Have you seen them?
A. Yes, sir.
Q. Where?
A. I seen them out here the last time.
Q. You have seen them since you have been here?
A. Yes, sir.
Q. Are these the same mules that are hitched out here in front of the court-house that Bickeford had?
A. Yes, sir.
Q. Are these the mules that he was working with at the scraper?
A. Yes, sir.
Q. Do you know anything about his leaving there, him and the defendant?
A. He left there, I reckon, two or three days before Mr. Holder left; that was the last time I saw him before Mr. Holder left, and then he came there and got the team; the team was between us, and he came to Mr. Holder's; and he came there and got it one evening and went off the next morning with it.
Q. Who came and got it?
A. Mr. Holder and a man named Sam Williams.
Q. Mr. Holder is the defendant here?
A. Yes, sir.
Q. Did he say anything as to what he was going to do with the team?
A. No, sir; I never heard him say.
Q. Mr. Bickeford was gone two or three days, then?
A. Yes, sir; that is the last I saw him.
Q. Do you know exactly how many days Mr. Bickeford had been gone before Holder left?
A. No, sir; I don't know how many days he had been gone before Holder left.
Q. It was some two or three days?
A. Yes, sir.
Q. Here is the necktie and here is the shirt. Are these the ones that you spoke about awhile ago?
A. Yes, sir; I am confident they are the same ones that he wore there.
122 Q. Is there anything about the shears that you can mention now that you would know them by?
A. No, sir; I am satisfied, though, they are the same shears. I saw him use them several times.
Q. You have seen them since you have been here—since you have been on the stand?
A. Yes, sir; I am satisfied they are his shears.
Q. Did you see the defendant when he left with the team?
A. Yes, sir.
Q. Who went away with him?
A. Sam Williams.
Q. Did you ever see Holder back there any more?
A. No, sir.
Q. Did you ever see him come back there about Christmas time?
A. Yes, sir.

Q. If he come back there about Christmas time he didn't come to where you were?

A. No, sir.

Q. Were you still there Christmas?

A. Yes, sir; we were there Christmas.

Cross-examination by Mr. J. C. Byers:

How long have you lived out there at Hartshorne?

A. I suppose I have lived out there probably 5 or 6 months; I will say five.

Q. How long did Mr. Bickeford stay with you?

A. I don't know. I don't think he was there over a month or 6 weeks, to the best of my knowledge.

Q. Did you wash for him?

A. No, sir.

Q. How do you come to know his shirt so well?

A. He was there—around there—a good deal, and he was right in our sight all the time.

123 Q. Is this man the only man that wore those kinds of shirts?

A. No, sir; I suppose not.

Q. Is there any mark on that shirt that enables you to especially identify it as being his shirt?

A. No, sir; none that I know of.

Q. Then you think this is his shirt because you saw him wear a similar shirt?

A. I am confident it is his shirt.

Q. Tell us some reason?

A. I would know the shirt to be the same shirt the same as you would know anything you were acquainted with is all I have to go by.

Q. Could you show us some mark or something that will enable us to ascertain how you could tell that from any other dirty white shirt?

A. No, sir; I don't know that there is any mark on it.

Q. Wouldn't any other shirt out of the same box, and of the same size, and dirty like that look like it?

A. It might; I do not know.

Q. Then you could tell it was Bickeford's?

A. I think I could; I think I could tell that; it looks like the same and I am confident it is the same shirt.

Q. Tell us why you are so confident it is the same shirt?

A. I have no marks or nothing that way to go by.

Q. Were you and he good friends?

A. Well, I liked him as a neighbor man.

Q. How well acquainted were you with Mr. Holder?

A. We were just only tolerable well acquainted; I saw him every day.

Q. You didn't like the old Dutchman very much, did you?

A. I liked Mr. Holder very well; he seemed to be a very good neighbor for a man.

124 Q. He was working for your husband, was he?

A. No, sir.

Q. Never worked for him?

A. No, sir; If he did it is more than I know of.

Q. Do you know whether or not Mr. Bickeford ever worked for him?
A. Mr. Bickeford worked for my husband, or worked under him, at least.
Q. When did Mr. Bickeford leave?
A. I could not tell you exactly when, for I never paid any attention; there is so many leaving and going I didn't pay any attention to when he did leave.
Q. You know that he left?
A. Yes, sir.
Q. When did he leave, in the daylight or dark?
A. I saw him last in the daylight; I don't know when he left.
Q. What made him leave?
A. He had a little racket there, I suppose was the reason; I didn't see it, and I don't know anything about it.
Q. Had a racket with your husband?
A. Yes, sir.
Q. You don't know what it was about, do you?
A. No, sir; I do not know anything about the racket.
Q. How long after he left was it until Mr. Holder left?
A. It was two or three days after Mr. Bickeford left that I saw Mr. Holder leave.
Q. What, if anything, did Mr. Bickford leave behind him in the way of property, if he left anything?
A. Nothing more than a wagon and team.
Q. His flight must have been very sudden if he did not take time to take his wagin and team with him?
A. I don't know anything about that.
Q. He must have been very anxious to get away?
125 A. I suppose he was *was* by him leaving; I don't know anything about his business.
Q. Some one must have been after him with a sharp stick, were they not?
A. Not that I know of.
Q. He never returned any more after he left, did he?
A. Not that I know of.
Q. You spoke something about some shears there; who did these shears belong to, do you know?
A. They belonged to Mr. Bickeford, I am satisfied.
Q. They are his shears?
A. They look just like them.
Q. There could not be another pair just like them?
A. I suppose so.

126 WILLIAM ELLIS, being called by the Government and examined, testified as follows, to wit:

The DISTRICT ATTORNEY: Q. You are a deputy marshal, are you not?
A. Yes, sir.
Q. Where do you live?
A. At Hartshorne, Choctaw Nation.
Q. Do you know the defendant?
A. I know him when I see him.

Q. You are the man that arrested him, are you not?
A. Yes, sir.
Q. Did you see the body of the deceased?
A. Yes, sir.
Q. Where did you see it at?
A. At Wilburton.
Q. Were you there when he was identified?
A. Yes, sir.
Q. Identified as whose body?
A. George Bickeford's.
Q. By whom?
A. Jim Stone.
Q. Can you describe the appearance of any of the wounds found on the body?
A. He was shot in the back; there was a hole in his back.
Q. Whereabouts?
A. Right between his shoulders.
Q. Can you give any better description of it than that; did you notice whether or not it came out in front, or did you notice that?
A. It looked like there was a shot came out right here (indicating at neck); looked like he had been shot with a shotgun; a big hole in his shoulder, and one shot came out right here in front of the neck.
Q. How big a hole was it?
A. You could run your finger in just that way.
Q. You say one shot came out in the neck in front?
A. Yes, sir.
Q. How big a place was that?
A. That was just a small place, about as big as my little finger.
127 Q. Was there anything found on the body while you were there?
A. No, sir.
Q. What did you do with the body?
A. The body was there when I left. The train came in directly after it came and I left on the train.
Q. Where did you send it to?
A. They buried it there. I seen him there, and went home before he was buried.
Q. Do you remember when that was?
A. That was the second day of February.
Q. You have said you arrested the defendant; when did you arrest him?
A. I arrested him the fifth day of February; I think about the fifth.
Q. Where did you find him?
A. Over here in the Arkansas bottom, about three or four miles over here; I don't know just exactly, but over in the bottom, though.
Q. Do you know where Kayser's place is?
A. Yes, sir.
Q. It is three or four miles from town?
A. Yes, sir.
Q. Please state if you found in his possession a wagon and team of any kind?

A. He had a small wagon and span of mules in his possession.

Q. Anything else?

A. He had a shotgun and some steel traps, and a couple of trunks, I believe.

Q. What did you do with th'm, then?

A. I didn't do anything with them then.

Q. Left them there, did you?

A. Yes, sir.

Q. Do you know how Asbeel come to get them?

A. No, sir.

Q. Have you seen that team since?

A. Yes, sir.

Q. Where?

A. I saw it here in town.

128 Q. Have you seen it to-day?

A. Yes, sir.

Q. Where is it at?

A. Down on the street.

Q. In front of the court-house?

A. Yes, sir.

Q. Is that the team that was there, the team that was brought by Mr. Bickeford, the same team that he had in his possession?

A. Yes, sir; the same team that he had in his possession in the bottom when I arrested him.

Q. If you had any conversation with him about the killing of Bickeford, state what it was at that time.

Mr. BYERS. I object to these statements unless they were made voluntarily on the part of the defendant. He was then under arrest, and the conversation——

The COURT. You can ask him as to the circumstances.

The DISTRICT ATTORNEY. Please state if you had a conversation with him about this killing. Answer that yes or no.

A. Not right at that time.

Q. Did you have any conversation with him as to where Bickeford was at that time?

A. Yes, sir.

Q. Please state if that conversation was made from you offering him any inducements to make a statement to you. Did you hold out any inducement to him, or was the statement voluntary?

A. I asked him where Bickeford was——

Q. Hold on; you can tell me if he made the statement voluntarily to you, or whether you held out any inducements to him, such as that it would be better for him to do so, or that it would be easier for him.

A. No, sir; I did not.

129 Q. You simply asked him where Bickeford was?

A. Yes, sir.

Q. Go on and give the whole conversation, commencing right at the beginning. What did you say to him; who opened up the conversation?

A. I asked him where Bickeford was, and he just said he left him about two weeks ago. I first asked him where he got that team, and he

said he bought it from Bickeford, and I asked him where Bickeford was, and he said he left him about two weeks before Christmas, between Wilburton and——

Q. Did he say where Williams was?

A. He said he left him about two weeks before Bickeford did.

Q. That Bickeford left him about two weeks before Christmas?

A. Yes, sir.

Q. That he had bought the team from Bickeford?

A. Yes, sir.

Q. What did he say he gave him for it?

A. One hundred and twenty-five dollars.

Q. Go on and state all he said about it.

A. He said he gave him a note for one hundred and forty dollars, that was on a man named Stykes; gave him the note; the note was on a Saint Louis bank, and Bickeford gave him fifteen dollars.

Q. He had a note for $140.00 on Stukes?

A. Yes, sir; John Stykes. The note was on a Saint Louis bank, he said. He said Stykes lived in Newton County, Missouri.

Q. He had a note for one hundred and forty dollars?

A. Yes, sir; he said that he was dead, though, now.

Q. Did he say when he bought this team?

A. Two weeks before Christmas.

130 Q. Was that the time that Bickeford left?

A. Yes, sir; bought it at the time that Bickeford left.

Q. That Bickeford left before Christmas, and that he bought the team two weeks before Christmas.

A. Yes, sir.

Q. How much was the note for?

A. One hundred and forty dollars.

Q. What did he do about the balance?

A. He said Bickeford gave him fifteen dollars in money and the team.

Q. Gave him fifteen dollars in money and the team for the note?

A. Yes, sir.

Q. Did he tell you where Bickeford went to?

A. He said he went off north; he said he took the hind leg of a rabbit and some apples, and didn't take anything more, only some letters. He didn't take his clothing or nothing with him; he said he was going to hunt Sam Williams.

Q. Said Bickeford was going to hunt Sam Williams?

A. Yes, sir.

Q. Please state if the defendant had any arms of any kind when you arrested him.

A. He had a shotgun in the house.

Q. Anything else?

A. He had a sling shot in the trunk.

Q. Which trunk did he have the sling-shot in?

A. The trunks are pretty nearly alike.

Q. He had a sling shot in the trunk?

A. Yes, sir.

Q. You don't know which trunk it was that he had the sling shot in?

A. No, sir; but one of the trunks. They are pretty nearly alike—similar trunks.

Q. Did he tell you where he got the sling shot?

A. Yes, sir.

Q. Where did he say he got it?

131 A. He told me his uncle gave it to him during the war, after he got to the jail house.

Q. At the time of the arrest did he tell you?

A. Yes, sir; he said his uncle, or brother or some connection gave it to him; that is when I saw the sling shot in the house.

Q. He told you then, what about it?

A. He said his uncle gave it to him, I believe it was his uncle, in the time of the war.

Q. What kind of a hat did he have when you arrested him?

A. He had a white hat.

Q. Look at this hat I now hand you, and see if it is the hat he had on when you arrested him?

A. It wasn't soiled as much as it is now.

Q. New hat?

A. Pretty near new; yes, sir.

Q. That is the same hat?

A. Yes, sir; I paid attention to it; it had that band around it.

Q. You think that is the hat?

A. Yes, sir.

Q. You say it was nearly new then?

A. Yes, sir.

Cross-examination by Mr. J. C. Byers:

You say you are a deputy marshal?

A. Yes sir.

Q. Did you have a warrant for his arrest when you arrested him?

A. Yes, sir.

Q. That was after you had buried this body?

A. Yes, sir; I guess the body was buried; they said they would bury it.

Q. Whereabouts did you arrest him at?

A. Over here in the Arkansas River bottom.

132 Q. On whose place?

A. I don't know whose it was.

Q. What was he doing?

A. He wasn't doing anything when I arrested him.

Q. What time was it?

A. Late in the evening, about six o'clock, I reckon. Maybe about five; about six when I got there.

Q. He must have been doing something; was he sitting, or standing, or laying down?

A. As I walked up he walked out of the house.

Q. Whose house was it?

A. I don't know whose it was.

Q. Where was the team at?

A. Standing in a little lot like, near the stable.

Q. It wasn't hitched up?

A. No, sir.
Q. Did you bring him to Fort Smith?
A. Yes, sir.
Q. When did you get possession of his property?
A. I have nev'r been in possession of his property.
Q. I understood you had turned it over to Asbell. Do you know how he got possession of it?
A. No, sir.
Q. You didn't take possession of any of it, did you?
A. No, sir.
Q. You didn't take possession of his gun, or sling shot, or anything you found there?
A. No, sir.
Q. Which trunk was the sling shot in?
A. I don't know; they are both small trunks.
Q. How did he come to show it to you?
A. I just went and looked in his trunks.
Q. That is when he told you that his uncle had given it to him during the war?
A. Yes, sir.
Q. Were the trunks unlocked?
A. Yes, sir; he unlocked them.
133 Q. They were both locked, were they?
A. Yes, sir.
Q. At what time did this conversation occur which you have related; did it occur immediately, right then and there, or on the road to Fort Smith?
A. On the road to Fort Smith.
Q. Who heard that conversation?
A. Jim McBride.
Q. Was Jim McBride with you when you made the arrest?
A. Yes, sir.
Q. There was nothing said by either you or Jim to him, to ask him to tell you all about this trouble, that you thought it would be better to do it?
A. No, sir; there wasn't a word said about it.
Q. What was Jim McBride doing there?
A. I got him to go with me and take part in the arrest. I took him with me.
Q. For what purpose?
A. I didn't know the country over there very well, and I was going over there to look for him.
Q. You took Jim McBride with you to show you the country?
A. Yes, sir; and help me arrest him.
Q. Did you ask him at the time of the arrest whose place he was on?
A. No, sir; I asked him who lived there when I walked up.
Q. What did he say?
A. He said Lewis Holder.
Q. Was the house furnished, or was it an empty house?

A. It was in an empty house; there was some cotton in it.

Q. He said he had traded a note on a man named Stykes; are you sure that is the name?

A. Yes, sir; John Stykes.

Q. The man lived in Newton County, Missouri, and it was for one hundred and forty dollars?

A. Yes, sir.

Q. Are you sure it was Newton County; wasn't it Scott?

A. He said Newton County.

Q. And he traded that for the team and mules, and fifteen
134 dollars. Did he say anything about the separation from Bickeford, that they had been separated for some time, and that he had gone North.

A. He said they had separated about two weeks before Christmas.

Q. Did he say anything about Williams?

A. He said Mr. Williams left him about two weeks before Bickeford did.

Q. Did he indicate the time or tell anything about the time when he had bought this team?

A. He said he bought the team when Bickeford left him.

Q. Was that before or after Christmas?

A. Two weeks before Christmas, he said.

Q. That was all he said in connection with it?

A. Yes, sir; that is all he said.

Q. You apprised him of the fact that he was under arrest?

A. Yes, sir.

Q. You had your revolver with you, of course?

A. Yes, sir.

Q. What did McBride have?

A. He had a revolver.

Q. You didn't suggest to him, either one of you, that it would be better for him to make a clean breast of it to you?

A. No, sir.

Q. You ironed him, did you?

A. I did until we came out to the main road, and then we took them off of him.

Q. What kind of a hat is that you have got; it is a Stetson?

A. Yes, sir.

Q. That is the hat he had on at the time you arrested him?

A. Yes, sir; it looks like it.

Q. That hat and your hat do not look alike?

A. No, sir.

135 Redirect examination by the DISTRICT ATTORNEY:

The statement that he made to you that Bickeford had left two weeks before Christmas, at which time he had bought his team, and that he had gone North, and took nothing but the hind leg of a rab'it, when he told you that he took none of his clothes, did you suggest anything to him to do it, or did he just mention it himself?

A. I asked him if he took his clothes, and he said no. He didn't take anything but his letters, and left his valise and everything.

Q. Did he mention the clothing?

A. Yes, sir; he said he didn't take his clothing.

136 JOHN BICKEFORD, recalled by the Government:

Mr. BYERS. May the court please, I don't think it is right for the district attorney to have a witness sitting by the s'de of him, when the rules of separation have been applied in the case, and then put him on the stand, after sitting here and hearing all the examination of the other witnesses.

The COURT. This man is a relative of the man killed, and I think it is proper that some relative of the deceased be in court all the time. If the application had been made, I would have allowed him to be in here from the first.

The DISTRICT ATTORNEY. This is just simply a little matter I want him to explain, that came up when the last witness was on the stand.

Mr. BYERS. I will reserve an exception.

The DISTRICT ATTORNEY (to the court.) I did intend to put Mr. Asbell on the stand to prove this, but it occurred to me that I hadn't given the defendant notice, and I can prove the same thing by this witness. (To witness.) You said that these things were turned over to you?

A. Yes, sir; the mule team and wagon and trunk, and the things that are in them.

Q. They were turned over to you by Marshal Asbell?

A. Yes, sir.

Q. State how he came to turn them over to you, if you know of your own knowledge.

A. On the evening before I went to get these things I met Jim McBride down here, and I went on to tell him about how Holder had given his attorneys a bill of sale of the team——

137 Mr. BYERS. I object to that.

The DISTRICT ATTORNEY. You learned that he had made some disposition of them. Go on and state what you did from that.

A. I went to Mr. Yoes then, and he told me to come back in the morning.

Mr. BYERS. Never mind what he said.

The DISTRICT ATTORNEY. Go on.

A. The next morning I went to General Wheeler, and General Wheeler drew up a document, I suppose, or something, and I carried it up to Mr. Yoes, and Mr. Yoes gave me an order for the team, and he also sent Mr. Asbell with me to get the team, and Mr. Asbell got the team and turned it over to me, and I took the plunder and everything that was with it.

Q. General Wheeler is a commissioner of this court?

A. Yes, sir.

Q. This case had been tried before him, hadn't it?

A. Yes, sir.

Cross-examination waived.

138 Government rests, and the defendant, to support his defence, introduced the following witnesses :

LEWIS HOLDER (the defendant), who testified as follows :

139 *Testimony offered by the defendant.*

LEWIS HOLDER, the defendant, sworn and examined in his own behalf:

Mr. J. C. BYERS. What is your name?

A. Lewis Holder.

Q. How old are you?

A. I will be 51 years old in October.

Q. Where have you been living?

A. I have been living—for the last seven years I have been travelling. I was raised in Scott County, Missouri.

Q. When did you go to Hartshorne?

A. I went to Hartshorne in August. I arrived there about the 16th of August, a year ago.

Q. When did you first form the acquaintance of George Bickeford?

A. It was some time in November, about the eighth or tenth, I got acquainted with him. He came to my shanty one evening after dark.

Q. That was this last November?

A. Yes, sir.

Q. Go on.

A. And it looked like he was scared. Of course, I didn't know anything about the trouble; there was a scuffling there and he came to me.

Q. What struggle was that to which you allude?

A. Between Bickford and Sloan. So he came to me about eight o'clock after night, and I didn't know him, because he was a stranger to me and I didn't have any acquaintance with him, any more than I have these gentlemen here, and he told me the trouble. "Well," says I, "What are you going to do about it?" and he says, "I don't know what to do about it, and he says, "Have you heard anything about it?" and I says, "I have been up town this evening to look after my pension check, and I was standing at the post-office and I heard some remark made that they were going to arrest two of them that had a fight down here
140 in the coal pit," and I says, "I never learned anything more;" I heard them make some remark about it, and he says, "I am the one that had the fuss with Sloan," and I says, "You ought to be old enough——

The DISTRICT ATTORNEY. I think that conversation hardly competent, but go ahead.

The WITNESS. I says, "You ought to be old enough to know what to do," and he said he could get nobody to take the team or could not sell it, and he said if he could get any price for it he would sell it, and I told him, I says, "Times are pretty hard now;" I says, "You know that corn is selling right now at from seventy-five to eighty cents a bushel, and you can't get hay for less than forty cents." I went to look at the team, and I told him I had a draft that was sent to me from Scott County, Missouri, on the sixth or fifth of October, out to South McAlester, when I was working for old Jo Cooper; I had been working for him, and the letter

was sent to me, and this man Stykes wrote a letter to me right here at Fort Smith, and I got this letter in July, the twenty-fifth or twenty-sixth, after my wife had left me. Of course that letter is outside of this arrengement entirely, and he said he would sell his team for any price, and I told him I could have bought a team at South McAlester right out of the lumber yard, at the planing mill, for sixty-five dollars. "You come down to-morrow," he says, "and see it." "Well," I told him, "I will." And I showed him the draft I had, and I got him to read it, and, of course, I never seen the man before with the exception of working around there, and I never had no conversation with him much before, and the next morning when I went down his wagon was right across a little
141 drain, and he took me down over there, and I says, "That is your team," and he says "Yes," and I asked him how old they were, and he said one was seven and the other he thought was about ten, he thought; he said he didn't know much about it himself, and I didn't know much, and I told him I might as well look in a horse's foot as in his mouth to know their age, and I looked at the wagon and the front axle was broken, and a new false axle, and the irons that held the tongue together were broken, and the iron that run under the axle-tree and back to the front hound, that was broken off. "Bickeford," I said, "one hundred and twenty-five dollars is a big price for that wagon; wagons and teams is cheap, and that is high." "Well," he says, "me and Mr. Williams want to go out, and I will let you know this evening what I am going to do." I says, "Mr. Bickeford, I don't need any wagon at all, because as soon as I got my pension check, which I am waiting for, I am going to take the train to Fort Smith, me and my boy, and I want to send the boy to school. There is no school here where I can send him." And I says there was just two or three days a week we could get work there and it didn't pay me to lay around there. Well, we went out the next morning, or that night he came to my shanty where I was living, and he knocked on the door, and I asked him, "Who is that?" and he said it was George Bickeford, and I told him to come back the next morning, and he said that he would come back the next morning, and he come there just about the time I had a fire started, and he said he had been out to Number Three and seen Mr. Grady, and seen two or three others, and he said that was all he could do; and I says, "I will tell you what I will do; we are not acquainted with one another at all whatever, and if we can get the money for this draft will take the team at that price." Well, we went out together, and we taken the draft and went into the company's store and tried to get it cashed;
142 I let him have the draft because he understood business better than I did, and I hadn't anything to do with any kind of drafts only pension drafts, and never handled any money except a little at a time. He asked if they could cash this draft, and the clerk said, "I can't cash any draft here at all; we don't handle any paper money except some script, but if the superintendent of the store is here—he will probably be here to-morrow—and you may see from him whether you can do anything or not." So we couldn't do anything there and we went to work and went back again, and staid around two days, and finally he went to work for Mr. Sloan and gets time for his work. Mr. Sloan was keeping time for all the hands for Mr. Lahee. After he had his time him and me went up again; he come to my shanty and asked me to go along to Hartshorne,

and I went up and he discounted 15 cents on the dollar to get the paper money and silver for this draft, money, or what you call it, company money, and he showed me eleven dollars and twenty-five cents, and I told him that it would not do, and he said he couldn't get away on that money, and I says, "Of course I don't know anything of your trouble whatever, only I heard that you had made three or four licks at a man with a rock."

The DISTRICT ATTORNEY. Never mind that.

The WITNESS. I am stating just what was told me.

The DISTRICT ATTORNEY. Go ahead, I don't care.

The WITNESS. He said, "Yes, I had a rock in my hand, about three inches square, and about six inches long, and if I had ever got a fair lick on him"—and he showed me the way he had him, had his head under his arm—"if I had got a fair lick at him I would have killed him,
143 and I was going to leave him right there," and I says, "If that is the proof on you it will go bad on you, and of course I will help you all I can to get out of this trouble." That is, I didn't like to see a man in trouble. I had five dollars in silver then that I borrowed from the postmaster on my pension check, and I was going to get timber enough to cover this shanty which I had built with a roof, and I had two dollars besides, and I says, "I will tell you what I will do; if you want to get away I have got five dollars, and I can let you have as much as four dollars," and he says, "Give me all you can," and I says, "I will let you have four dollars and seventy-five cents in silver," and he says, "You hold the wagon and team and I will meet you at Red Oak. I will write you at Red Oak, and I will go over to Pleasant Bluff, and I want you to write over there and I will get the letter, and wait until I get an answer." Well, Mr. Williams and I had to fix the wagon. We got the wagon fixed, and before we moved away at all, and the next morning about ten or eleven o'clock, we went over towards town, and one of the pieces that held the tongue got broke in two again, and we had to get it fixed again, and I didn't think we could do anything with it, and I said so to Mr. Williams, and we went to the same colored man and had it fixed again, and I says, "If this is the way you do your work I don't believe I will have much to do with you with such work as that. He went and fixed it and charged twenty cents, and I paid that out of my pocket, and that wagon, before I moved it away from Hartshorne, I paid out one dollar and forty cents in cash out of my own pocket to fix it. And then we went on the next
144 day, probably it was two miles; some of the witnesses said it was a mile or so; we went two miles about what they call the lake. Of course I never seen the lake, but Mr. Williams took me over there in that country. I never was in here that far in the Choctaw Nation, only just along the railroad, except at Krebbs, and at Old McAlester, and we stayed there about two days at the lake, and we couldn't do anything, and Mr. Williams promised to get a gun. We had no gun, and wanted to go out hunting, and didn't have any gun, and I said to Mr. Williams, "We have got to get away from here; we can't make grub here." And I says, "I will tell you what we do; we will go up in Blue Mountain, above Red Oak, and see what we can do there." And we went along and we met a fellow, I forget his name, who knew the country, and we asked where he was going—he was an old man, I suppose about sixty-five years old, claimed to be a Grand Army man, and he told us, "Boys, that is no

place for you to hunt, and you ain't got gun, and there is no place for you to hunt at all." He said there was plenty of bear and deer and panther in there, and he says, "You have got no gun." And I says to Mr. Williams, I says, "I guess we had better go;" and he said there was no water there to trap in, and I didn't think we had better go, and we didn't go there. So we trusn across the railroad and went up between Leflore and Red Oak, about eight miles across the country, and we went there on a creek called Fusch Marine, and we stopped there a little over eight days, I think it was; and I didn't kill anything only a coon, and several rabbits, and a squirrel. I killed one coon and a beaver, that is all. Mr. Williams took one of the mules and went over to Red Oak looking for a letter from Mr. Bickeford, to find out what he was doing.

145 Well, one evening about two o'clock he came into the camp where we were, and my boy and me was sitting right near the wagon, a picking some quails we killed, and skinning one rabbit, and he said, "I have got a letter from George." and I says, "Open it." And he says "No, you open it; it is addressed to you." And I says, "I can't read at all; I don't know one letter from another," and I says, "You open it and see what he says." And he opened it and read the letter, and it says I will be there Sunday next. That was, I believe, on Tuesday. We got the letter Tuesday evening, and about half an hour afterwards I told him—I says, "I will go and feed the mules and let them out, and while the mules are eating, you can write a letter and direct it to him, and write where he is, and let him know where we are camped." Mr. Williams wrote the letter and afterwards took it over to the post-office at Red Oak. The next day he went there again, and come back about four o'clock I suppose, in the evening, and I says, "This ain't going to do to leave the boy to watch the wagon; we don't know what might happen with things. We don't know the country, and we don't know how the citizens are." And I knew if anything was taken away I was held responsible for it because everything was in my possession, the team and everything; and I says to Mr. Williams, "This won't do; I can't leave this boy; he cries his eyes mighty near out; it won't do." And he says, "I will tell you; I got the money that was left with the depot agent for me;" and he says, "I am going to leave." And he showed me the money, sixty-seven dollars, and he told me—he says, "I have got money coming to me from my father, near Scullville;" and he says, "I will leave." And I says, "You ought to stay with me until George comes, because me and this little boy if any-

146 thing should turn up, everything would be laid onto me, and he says "Holder, I can't stay any longer." "Well," I says, "if you can't stay any longer, you will have to help me move then; we will move the wagon further up on the creek; I have found a place where I think it is a better place, and it is nigher to the road where the people pass," and he said he would; so while he was getting breakfast that morning I went around to the lake to get my traps away, and I found them all but two, and after breakfast I took my boy, and he sa'd he knew where they were, and we found one, and the other we found the chain was broken off from the lock, like somebody had taken it off. We left and went back to camp, and got on the wagon, and went about a mile further on east. We staid there one night, and then we and the boy went over to Leflore, in a quarter of a mile of Leflore and camped there, and

Mr. Williams left. I don't know whether the court has any objections to my stating the way it went on. That is what I want to know. That is all I want to say about it. Nothing but the truth; I don't want to tell no story in the whole case, and I'm not going to. So Mr. Williams took up his clothes. He had some five or six shirts in his trunk, unlocked it so he could get into it, and took out what he wanted. There was a revolver left in there of Mr. Bickeford's, and also this sling shot, and a lantern, one of these bul's eye lantrens it is called, a police lantren, that was left in the trunk. My boy and this man Williams got in the trunk before I ever seen what was in there at all, and I hope to die if I seen anything before they went into it, and turned it all upside down, and I said "Mr. Williams, I want you to stop that; you have no business in that trunk; let that trunk alone, I don't want my boy to have that pistol." I
147 never owned but two, and I gave them away, and I didn't want him to have any. He said he only wanted to get his shirts and drawers, and I told him all right, and he said they was not dry, that they was ironed, but not exactly dry, and I says, "You had better hang them out." And so this went on, and Mr. Williams left us at Hartshorne. Me and the boy left that pistol and sling shot and lantren in the big trunk. The next morning I went and looked through the trunk. It rained that night, and I uncovered the 'runk, and I knew there was a piece of domestic in there, and old quilts, and they were wet, and I hung them out on the bushes, and there was no clothes there except an old yellowish shirt, striped shirt, and that was patched like it had been worn two or three weeks; that was all that was left in the trunk, except some letters. Mr. Williams told me that he went by several different names.

The DISTRICT ATTORNEY. You need not mind. Don't try to blacken the man; go ahead and leave that out.

The WITNESS. Of course, I says, I can't read or write, and you had better let them alone. I says to Mr. Williams, when he was telling me this, "You have no business in them anyway; let them alone." He left then, and left everything to me. We went over to Leflore. We stopped two weeks there, waiting for him. Sunday came on, and the next Sunday, and no Bickeford. My boy went up to the depot every day at train time, and no Bickeford there. After the second week—I didn't know it was Sunday until I got to the post-office, and I went and knocked at the door, and the postmaster said, "Come around to the hind door; and I went around, and I says, "What does this mean?" and he says "Why this is Sun-
148 day;" and I says, "Is there any letter here for Lewis Holder?" and he looked, and said, "No; there is no letter here."

The DISTRICT ATTORNEY. Never mind about going to the post-office and finding no mail there.

The COURT. Go on and tell what you did from there.

WITNESS. I went to the postmaster, and I told him——

The DISTRICT ATTORNEY. Never mind what you told him.

The WITNESS. I told him if anybody called for me——

The COURT. Your talk with the postmaster has nothing to do with it.

The WITNESS. Of course I told the postmaster if anybody come and called for Lewis Holder to tell them where I went to. I told him we were going up to Wister Junction along on that road. We went, I suppose,

about ten miles, and Bickeford catched up with us all at once, and I stopped the wagon and told him to get up; and it was raining rights harply; and we drove on, I suppose, about seventy-five or fifty yards, and the coupling pole broke, and we had to stop that night; and we put up a tent, and he went and got a bucket of water while I put the tent up.

The DISTRICT ATTORNEY. I think this witness ought to be kept down; what has the going after a bucket of water to do with this killing.

The COURT. Go ahead.

The WITNESS. After he got the bucket of water he brought out a bottle of alcohol—a quart bottle.

The DISTRICT ATTORNEY. Did the alcohol kill you or him?

A. No, sir; that didn't kill me.

Q. Did that have anything to do with the killing?

A. No, sir.

149 Q. Why speak of it?

A. Hold on, Mr. Clayton; I tell you the truth; just what went on there. Him and my boy both got drunk that night, and I had to wake them up, and they sobered up, and I went to where he put the alcohol, and I pulled the cork out of it, and laid it down on a piece of plank, and made him believe it spilled, and I let the alcohol run out. The next day it was still raining there, and we fixed the coupling pole, and we stayed there all day, and that night everything was wet pretty well, and I told him we had better dry everything, and the next morning—that was the third day after he was with me—we started up to Wister Junction, and got within about half a mile of Wister Junction and we stayed there, and camped there, and put up a camp, and the next morning we went to the depot and the post-office, and I asked for mail for Holder, which I expected some goods that had been left behind with the butcher at Hortshorne.

The COURT. Cut that short; that has nothing to do with the killing; come down to where the killing occurred; we don't care anything about this; that has nothing to do with the case at all.

Mr. BYERS. Who did you purchase these articles from?

A. From Mr. Bickeford.

Q. When did you purchase them?

A. I bought them the fourth day after he came there.

150 Q. How much did you pay for them?

A. I paid him $125.00; gave him a draft for $145.00, which it called for; at least people told me it was $145.00.

Q. Where did you get that money or draft?

A. I got it from a man named Stout that owed me ever since early along in May, 1874.

Q. What was the face of the draft; how much did it call for?

A. $145.00.

Q. Did you give him that?

A. I left him have that, and he was to pay me $15.00 on the 22nd day of January; meet me right at Hartshorne.

Q. And the property became yours after that transaction, did it?

A. Yes, sir.

Q. How long was it from then until the day of the killing?

A. It was 9 days; we were 11 days together.

Q. Where were you on the morning of the killing?

A. We got up the morning of the killing, and we came up from the camp where we had been camped two days, right near what they call Blue Mountains.

Q. Who was in your company at that time?

A. Nobody but me and Mr. Bickeford and the boy; that is all.

Q. Whereabouts were you with reference to the wagon?

A. We left the camp and went down about a mile and a half——

Q. Where were you going and what for?

A. As we were going along the road—after we got up in the big road we come along the road, and all at once he says, "Look out, there; there is three deers; can't you see?" And I says, "No; I don't see them;" and I looked sort of to the right, and he said, "See there; there they are," and I looked there and I saw them; the body of one of them
151 coming down the hill.

Q. What did you do?

A. I started down.

Q. What did he do?

A. I started down, and I told my boy; I said, "Joe, you stay in the wagon with George, and when I call you you can come with him; one of you had better stay with the wagon." I started right on, never looked back, and he come after me; I didn't see him until I shot the gun off, and Mr. Bickeford was following me right along.

Q. What was he following you for?

A. I didn't know what he was after me for.

Q. What did he do?

A. I shot at one of the fawns, deer, and I had one barrel loaded with buckshot, and the other barrel with small shot, and I fired one barrel off, and failed to get it, and it circled right around to the right and came back within fifteen or twenty steps nigher to me than it was before running, and I wanted to fire the other barrel off, and the gun made no fire, and I reached right in my vest pocket to get the caps out, and I reached in the box to get a cap out with my mouth, and I had it with my mouth, and something drew my attention and I looked back, and just as I looked back he struck at me with a sling shot. He was then in three feet of me. He was down on his right knee, and I was down on my right knee, just this way. That is the way I was then in that shape, but when he struck at me I dodged just like that way, and he struck me right in here on the point of the shoulder, and I got up and run probably ten or fifteen steps, and he overtaken me, and as he could outrun me I had to stop, to keep him off with the gun, and I pushed him there three or four times, knocked the white hat off right there
152 now where the boys found the black hat. We hustled around there five or ten minutes, and I said, "George, what do you mean by all this?" And he says, "You know what I mean," and he says, "I gave myself away to you, and I am afraid you are going to tell on me."

Q. What did he mean by that; do you know?

A. He told me that he had killed a man with a sling shot at Pleasant Bluff, and put a rock in a sack and tied it over his body and put it in the water. Him and two others wwas playing cards——

Q. Never mind that; go on and tell what he said. Let us hear the balance of that fight between him and you.

A. I pushed him off two or three times and towards the last I run again the other way about 10 steps, and he said, "No; you are not going to go up that hill and more, damn you." I wanted to get up to that hill where I could holler for the boy there, but I couldn't get up the hill; he was stouter than I was, and the last time I pushed him with the gun I pushed him somewheres in the ribs—short ribs—and the man fell on his right side. I have to show you how he lay down. [Witness lays on floor.] He fell just this way when I pushed him with the gun. And he turned. Just as he turned this way, got around this way, he says, "Damn you, if I get up I will kill you, now," and I says, "You had better hold up," and he turned like he was, he getting up, and just as he was starting to raise to straighten up I fired. I aimed to shoot him in the head. I wouldn't have cared if I had shot his head off, because the evening before he took ma bot'le of whiskey out of his big trunk that I didn't know anything about, and brought that out and handed it to me and I says, "Where did you get this?" And he says, "I had it always—
153 all the time—and I says, "You drink it yourself." Of course, I never do drink very much whiskey; it affects my head——

Q. What did you do after you shot him?

A. So, of course, he drunk all of it, a pint of whiskey, from the evening until the next morning about 9 o'clock. At least there was no bottle found, I never heard of any bottle being found there; I didn't see any in the wagon. When I shot him he fell right on his face. I set right down; I was wore out and excited, so I didn't do nothing; I didn't know myself, because I never was in no trouble in my life that I have been arrested for.

Q. What did you do, then?

A. I just set down to rest, and finally I went up, and when I got up to the wagon my boy says, "where is George?" And I told him I had to kill——

Q. Never mind your conversation; don't tell that. You say you went off and left the body there; where did you go to?

A. I went to Wilburton.

Q. Did you do anything with the body?

A. No, sir; I never touched it.

Q. Did you say anything to any person as to what you have now said about having killed the man?

A. I did want to report it.

Q. Why didn't you report it?

A. I did want to report it. I did want to report it to this man who I left the team and my boy with; so'ething had happened, he couldn't stay at home; he was gone pretty near all the time, and I had started twice to tell him. I expect if I had been in my right mind I would have loaded the body up and taken him in, because I have n't got much grudge ag'in the man, no more than I have against either one of you gentlemen.

154 Q. Mr. Gilrith says you spoke about this man having left you a few eeeks before; did you allude to this man or to Williams?

A. Mr. Williams.

Q. Tel' what you meant in that conversation when you said you left this man two or three weeks before; what did you mean by that? Did you tell him that, to Mr. Ellis, in the conversation with him?

A. They had me so excited—held a pistol to my face——

Q. What did they say to you when they asked you to tell about this? Did they say it would be the best thing for you, or anything of that sort?

A. No, sir; he said, "You are charged with murder, and you give up," and held the pistol right in my face.

Q. How did you come to make this statement about how you parted?

A. I don't know how it was. Of course this man had started; after I gave him the draft he had started; came back; he started, went a quarter of a mile, and came back and got two apples, and a rabbit leg, and also had his razor and his shaving brush; he had that along with him, and also his letters that belonged to him. I had no letters whatever.

Q. What, if anything, did he have in his hands at the time that this fight was going on?

A. The sling shot.

Q. Did you see it?

A. Yes, sir; I took it off his hand.

Q. Where is the sling shot?

A. I don't know where it is; the marshal had it in his hand and asked me where did you get this, and when I was in the office I said, "Look here, marshal, I told you a story about this ——"

The DISTRICT ATTORNEY. Never mind that.

Mr. BYERS (of counsel for defense). Did you tell the marshal that your uncle gave it to you during the war?

155 A. No, sir; I did not tell him that; not as I know of, gentlemen.

Q. Then what did you do with this property?

A. We loaded everything just as it was, loaded everything up, everything that was left there when I was arrested, what I had and what he had.

Q. What did you mean by disposing of that property; did you regard it as your property at the time you disposed of it, or not? Did you regard that team and wagon and things as your own property, or did you not regard them as your own?

A. Yes, sir; of course; the man promised to meet me on the 22nd day of January right here at Fort Smith, at the saloon I heard them call the Panther saloon; I don't know where it is; I never seen it in my life—what they cal' the Panther saloon. He was to meet me and make me a bill of sale of that wagon and team. We had no paper at all.

Q. Was that the understanding between you and him cotemporaneous with the trade—that is, at the same time you had made the trade—was it the understand' that he was to meet you here and give you a bill of sale?

A. Yes, sir; that was the understanding. I took him at his word. Of course I didn't have any dealings with him before whatever.

Cross-examination by the DISTRICT ATTORNEY:

Q. What did he do with your check?

A. He read the check——.

Q. What did he do with it?

A. Put it somewheres in his pocket.

Q. Where is it, it has not been found; everything else was found?

A. I suppose they never found it.

156 Q. Did you steal it off of his body?

A. No, sir; I never touched the body any more than I have told you.

Q. Where is it?

A. I don't know.

Q. Has it been found?

A. Of course they have to search close, for he had two or three pair of pants on.

Q. Which pocket did he put it in?

A. I could not tell you which pocket he put it in. He told me that he put a five-dollar bill down on top of it and a five-dollar gold piece in the middle of it and he put it in a small envelope and put a yellow piece of paper around it he got in the store.

Q. Where is it?

A. I don't know where it is.

Q. You killed him with it on his body; it has not been found?

A. I know it hasn't.

Q. Who knows he had it? If there was such a draft, and he had it in his possession, there is somebody that knows it. Who knows you had such a check or draft as that?

A. Of course I was notified not to let anybody know it.

Q. You were notified not to let anybody know you had it; who notified you that?

A. Several people. I tried to cash that at Krebs——

Q. Who told you that?

A. I didn't know anybody; I don't remember anybody's name.

Q. Is there many people at Krebbs saw it?

A. The first time I tried to cash it there I was working for old Joe Kober.

Q. He knows you had it?

A. No, sir.

Q. You tried to cash it?

A. Yes, sir.

Q. The people that you took it to knew you had it?

A. At Krebbs he told me, he says, "If you knock off 25 % we

157 wil' try to cash it or send it to St. Louis for you."

Q. Who told you that?

A. One of the clerks in the office.

Q. He knows then, that you had that draft. Where is he?

A. I don't know where he is.

Q. So nobody knows you had that draft? How long did you have it?

A. I had that draft from October until—I got it the 5th of October, 1891.

Q. You heard the witnes' testify that you said you got it and had it 14 years?

A. The man owed it to me for 14 years.

Q. So you didn't tell him that you had it for 14 years.

A. No, sir; I didn't tell anybody that.

Q. Did you carry it in your pocket all the time? It must have been worn out if you carried it 14 years. You didn't tell him you carried it 14 years?

A. No, sir.

Q. You had it since October, 1891, did you?

A. Yes, sir; it was sent to me at South McAlester.

Q. Did you have any interest on it?

A. Yes, sir; six per cent interest that it drew. The man wrote to me, right at Fort Smith when I was living on Mr. La Flore's place, that if I would cut the interest off he would pay, he thought, and I wrote and told him all right.

Q. Did you knock the interest off?

A. Yes, sir; knocked the interest off and told him to send on the draft.

Q. What bank was that draft on?

A. I could not tell you.

Q. Who sent it to you?

A. A fellow named John Stout.

Q. When did he die?

A. I heard that he died; that is all I can tell you.

Q. When did you hear that he died?

158 A. I heard it at South McAlester—no, at Hartshorne.

Q. After you got the draft?

A. Yes, sir.

Q. You have got him dead, so you can not prove it by him. Is there anybody up there that knows he sent you that draft; have you anybody on earth?

A. My boy seen the draft.

Q. Did anybody else?

A. No, sir.

Q. Can your boy read?

A. No, sir; he can't read or write; he does not know his A B C, I suppose.

Q. There is nobody knows it except your boy?

A. There was several, of course, that saw it, but of course I didn't ask them their names.

Q. You kept it quiet because somebody told you to; you kept it so quiet it couldn't be found on the dead man. What did you do with his overcoat after you killed him?

A. I never wore that overcoat only one time over here.

Q. What did you wear the overcoat for? The man was over there rotting.

A. Of course it was in my possession.

Q. You admit wearing the overcoat, do you, when the old darky saw you, do you?

A. Yes, sir; I wore it over here on the 4th day of February; rode it over here to fix my pension business.

Q. When you wore that overcoat did you tell anybody that you had killed Bickeford?

A. No, sir.

Q. How did it feel to put on that dead man's overcoat you left up there in the mountain without being buried—without anybody knowing wher' it was?

A. It didn't feel good.

Q. Didn't feel comfortable?

A. No, sir.

Q. What did you do it for? The man was dead; you left him in the mountain without burial; you told nobody you had killed him; and you were wearing his clothes you hadn't paid for?

159 A. Of course I would have told this man if he had'n been so busy.

Q. Was there anything else you wore that was his?

A. No, sir.

Q. Why didn't you wear some of the other things?

A. He did not have nothing.

Q. What became of his hat?

A. The hat—me and him, the very first day that we got together——

Q. Did you trade hats?

A. Yes, sir; we traded hats, and I gave him some corn that we had had at La Flore and paid 75 cents a bushel for it.

Q. He bought that hat at Hartshorne, did he not?

A. No, sir; he did not.

Q. I mean at Wilburton?

A. No, sir; he did not.

Q. Where did he buy it?

A. He said he bought it here first, and then he told me while he was drinking that he got the hat while he was playing poker at this Panther saloon; just put on the hat and went out th' back door and left his old hat laying there and went and got on the train.

Q. What became of the hat that had the rattlesnake band around it?

A. He told me that he throwed the rattlesnake band away; he was afraid he would be discovered. Of course everybody knew him by the rattlesnake band.

Q. You were arrested with his hat, and you were wearing his overcoat you never paid for, and you had in your possession some other things that belonged to him; you had a trunk that belonged to him, didn't you?

A. I paid for it five dollars.

Q. What did you pay for these shears.

A. Whatever was left in the wagon, exception the razor, over-

160 coat, and shaving brush, them there articles he put in his pocket and th' balance was left to me for $5.00, and then he owed me $15.00, and he was to pay me—make me a bill of sale, on the 22nd of Jaunary, right here at Fort Smith.

Q. What color was the handle of Bickeford's razor?

A. Well, sir, I could not tell you; I believe it was sort of a striped, spotted color; very light razor.

Q. Did you have a razor?

A. Yes, sir.

Q. What is the color of the razor you had?

A. Black handled, and the point of it broken off on the end of it; it is the only razor I had.

Q. He had the razor in his pocket, and you didn't get that?

A. He had the razor in his pocket, and he went off, and when we started off together he put that back again together.

Q. You bbought everything that he had there for five dollars?

A. Yes, sir.

Q. What was it you bought for five dollars.

A. Two white single blankets, two quilts, one skillet, broken.

Q. And the sling shot?

A. The sling shot didn't belong to me; he had that in his pocket.

Q. You said you bought everything else——

A. He had the sling shot in his pocket; I never got possession of the sling shot until I got it out of his hand when I killed him.

Q. When he was there, when you killed him, he was striking at you with his sling shot?

A. Yes, sir.

Q. How did the sling shot get into the trunk?

A. I put it in there.

Q. What for? What business had you to touch it after you killed him, and he fell with it in his hands? What did you touch it for?

161

A. I don't know whether I had any business or not.

Q. But you took it after he was dead, did you?

A. Yes, sir; I opened his trunk and put it into it, and put it in the wagon.

Q. Put it in the trunk?

A. Yes, sir; in the big trunk.

Q. Where was the sling shot when he was dead?

A. On his right hand.

Q. You had killed him; you stooped down after you had put that hole through him and took the sling shot off his hand. What did you want with it?

A. I took it along.

Q. What for?

A. I don't know that I had any use for it.

Q. Why take it off of the man after you had killed him? The same reason you wore his overcoat? Why take it? You have given me no reason.

A. I told you I didn't know exactly what made me take it; I was excited.

Q. Did you tell your boy that *you* must not tell?

A. No, sir.

Q. How come it that he didn't tell, if you told him that he was dead—that you had killed Bickeford?

A. I told him that I had to kill him.

Q. How is that he kept it a secret? How old is he?

A. 9 years old 10th day of July.

Q. If you didn't compel him, force him to keep that a secret, how is that he didn't tell it?

A. It is no use for old folks to tell their children everything.

Q. But you did tell him you had killed him?

A. Yes, sir; I told him that I had to kill him.

Q. Then your boy never told it until after you told it, did he?

A. I don't know whether he did or not.

162 Q. He never told it until after you were arrested, did he?

A. I don't know whether he did or not.

Q. Did you ever know of his telling it until after you were arrested?

A. No, sir.

Q. You say your boy is only 9 years old?

A. Yes, sir; born in 1883.

Q. Can you tell why it is that your boy didn't tell it?

A. I could not tell you that, of course; I wasn't out with him.

Q. You were with your boy?

A. No, sir; I was in the prison.

Q. I am talking about up to the time that you were arrested?

A. He wasn't with anybody but little children.

Q. Why wouldn't he tell little children or somebody?

A. I don't know.

Q. You are quite sure you told him not to tell; of course you didn't tell him not to tell?

A. Of course I did.

Q. You and your boy were both keeping this secret, were you?

A. Of course, my boy had nothing to do with whatever.

Q. But you and the boy were keeping it a secret, were you not?

A. Of course, I had no business to tell it after I got here and got arrested.

Q. You and your boy were keeping it a secret before you were arrested, were you not?

A. Yes, sir; after I got away from Wilburton I never said anything to anybody about it.

Q. Did you say anything before you got to Wilburton?

A. No, sir; I didn't see anybody.

Q. What is the use, then, of mentioning after you left Wilburton;

163 you never told it to anybody at all until you were arrested? Who was the first man you told it to?

A. I think it was Call Stephens.

Q. Where is ?

A. I could not tell you that.

Q. In jail?

A. No, sir; he was a guard in the jail. (To the court.) Honorable judge, there is a few words I wish to state to the jury——

The COURT. Never mind. If you want to be asked any particular questions you can tell your counsel and he can ask them of you.

The DISTRICT ATTORNEY. When you got these things from Bickeford, how long had Williams been gone?

A. Some two weeks.

Q. Where were you when you made the trade?

A. A little above Red Oak.

Q. In the woods?

A. Near to the railroad, just a little above the railroad, on the north side of the railroad.

Q. Was there anybody present?

A. No, sir; he wouldn't have anybody with him in partnership whatever. I wanted a Choctaw citizen along so we couldn't get into trouble, and he wouldn't have anybody with him at all.

Q. I was simply asking you if anybody was present when you made the trade?

A. No, sir; only the boy; he was off about 15 or 20 steps, playing.

Q. The boy wasn't even present?

A. No, sir.

Q. Nobody knows about that trade, then?

A. No, sir; the boy was off playing.

Q. Knows nothing about it?

A. No, sir.

Q. Nobody living knows anything about it?

A. No, sir.

Q. You write your name, don't you? That is your name there, is it not?

164 A. Yes, sir; signed it myself.

Q. This is your application for witnesses, written by Mr. Marmon, I believe?

A. I sign my own name; it is all I can write.

Q. It is written by Mr. Byers, filed in this court on July 27th, 1892. You swore to this, didn't you?

A. Yes, sir.

Q. Let me read it to you: "United States vs. Lewis Holder. Indictment for murder. In the circuit court. Comes now the defendant, and says that he is the defendant in the above-entitled case, and that he can not safely proceed to trial without the testimony of the following-named persons, to wit, Samuel Williams, and the two Long brothers, whose christian names are to the defendant unknown, but all reside near Scullyville, Indian Territory, by whom he will prove that he, the defendant, had purchased a team found in the possession of the defendant at the time of his arrest from the deceased, giving him a draft upon a St. Louis bank for the same for the sum of $145.00 for the team, two blankets, a trunk, and an empty beer box. That said testimony is true, and that he knows of no other witnesses by whom the same facts can be so clearly established; that he is poor," etc.

A. Honorable judge——

Q. Never mind; don't cut up so. You swore to this jury there was nobody in the world knew anything about that trade, or that you bought that wagon and team and these things, and in this application for witnesses you say there are three men you can prove it by?

A. The Long boys, they lived at the same time we lived at Hartshorne, they lived right in the same place; worked where Mr. Bickeford did.

Q. They didn't know that you bought the goods at Red Oak?

165 A. I just wanted them for witnesses to show that I had the team; I got it at Hartshorne.

Q. Did you at Hartshorne say anything about buying his blankets and his trunk?

A. Yes, sir; all that was talked at Hartshorne. The talk was all in my shanty, and he didn't want anybody to know it.

Q. How did those Long boys know it?

A. My boy told them; he was there with the Long boys.

Q. But your boy didn't know it; he wasn't present when the trade was made.

Q. The Long boys said, "You bought the team?" And I *si* said "Yes, $125.00."

Q. Who is that?

A. I did.

Q. You told the Long boys that?

A. Yes, sir; we were right down about a mile and three-quarters from the camp, where we hauled water from.

Q. I notice here in another application that you ask for Samm Williams and Jospeh Holder, by whom you can prove that the deceased was the owner and had possession of a sling shot at the time of the alleged murder?

A. Yes, sir.

Q. Joe Holder knows that, does he?

A. Yes, sir.

Q. Joe is here; he is your son?

A. Yes, sir.

Q. You never touched the deceased after you shot him, you say?

A. No, sir; I never touched him with my hand only when I taken the sling shot.

Q. You have stated that he fel' on his right side; how come you to get the sling shot out without touching him? You pulled his hand right out from under him—pulled it right out?

(No response.)

166 Q. Then when he was found his hand couldn't have been under him, unless he put it back again after you pulled it out? You pulled the right hand out from under him, didn't you? You have stated that he fell on his right hand?

A. He fell on his right hand when he first fell.

Q. You have showed us by getting on the floor how he fell, and that he had his right hand under him; did you pull his right hand out from under him when you pulled the sling shot out?

A. When he turned to rise he turned on both hands and knees, and when I shot at him he fell right afterwards.

Q. He was on his hands and knees when you shot at him?

A. Yes, sir; that is the way; that is the truth and nothing else.

Q. You pushed him over with the gun?

A. Yes, sir.

Q. He was a stronger man than you were?

A. Yes, sir.

Q. How could you push him down with the gun?

A. I just gave him a hard push.

Q. The wagon was over at the road, was it?

A. Yes, sir.

Q. Some three hundred yards away. You managed to get him three hundred yards from the road in the bottom of a deep gulch before you killed him?

A. He come down there himself.

Q. You managed to get in there before you had any fight. The first time you ever had any quarrel with him?

A. Yes, sir; he struck me and I said "What do you mean by this, George?"

Q. Never mind that; that was the first trouble you ever had with him in your life?

A. Yes, sir.

Q. And he banged away at you with a sling shot when you both were down here trying to get a shot at a deer?

A. Yes, sir.

Q. I wonder what he was on his knees for when he first struck
167 you. You said you were both on your knees?

A. I was on my right knee, and he was on his right knee, and I reached in my vest pocket to get the cap box out, and took the cap in my mouth, had the cap in my mouth, when he struck me in the back, and he gave me three more licks.

Q. When you got the cap on it it didn't hang fire the second shot, did it?

A. No, sir.

Q. Did you take the tube and put any more powder in it?

A. No, sir.

Q. You have stated that the first cap bursted; it didn't go off, the gun didn't.

A. The cap wasn't any good.

Q. You said you snapped it; what did you mean by that?

A. The cap busted, but the gun didn't fire.

Q. There was a little fiz, but the gun didn't fire?

A. Yes, sir.

Q. Did you put any more powder in the tube of the gun?

A. No, sir.

Q. The other barrel was empty; you shot that at the deer?

A. Yes, sir.

Q. That is right, is it not; the barrel you shot at the man with is the barrel on which the cap was bursted?

A. Yes, sir.

Q. Was his head down the hill or up the hill when you shot him?

A. Up the hill; I was down the hill trying to get up, and he would not let me——

Q. Was his head up the hill when he was this way?

A. Yes, sir; head up, and I was down the hill, and he says, "You will never get up the hill." When he fell first, he said "Damn you, if I get
168 up I will kill you," and I said "George, you had better hold up, keep quiet," and he said, "No, damn you, I gave myself away to you, and I am afraid you will tell on me."

Q. He had told you that he had killed a man with that very sling shot?

A. Yes, sir; and he also told me that he wanted to kill this man Williams for stealing things.

Q. Who did he tell you that he had killed?

A. He didn't give me the names; he never told me the name.

Q. Where did he say that he had killed him?

A. The first man he killed at Pleasant Bluff.

Q. He told you that he had killed a good many men, didn't he?

A. No, sir; he killed two.

Q. Where did he kill the other man?

A. At Denison, Texas; he throwed him in Red River.

Q. Did you ever write down to these places to ascertain if he had every killed anybody there, or have your lawyers to write?

A. I told them.

Q. Did you ever write or have anybody else write down there to ascertain?

A. No, sir.

Q. Have you ever written to Missouri to ascertain if there is anybody up there that knows you got this draft?

A. No, sir; I can't write myself.

Q. Have you ever gotten anybody to write?

A. I never had any chance.

Q. Have you ever gotten anybody to write?

A. I believe Mr. Frederick did write.

Q. Did you ever get any answer?

A. No, sir; never had no answer yet. He dropped my case entirely, Frederick did.

Q. You have got nobody here that saw your check?

169 A. There was several saw it, but I don't know their names.

Q. Did you ever have the body taken up and examined to see if the check was on the body?

A. No, sir; I told Mr. Sloan that the money must be with him somewheres on his clothes or in his pockets somewheres.

Q. When did you tell Sloan that?

A. I told him in the jail house; I asked him if they examined the body——

Q. You knew you were going to be tried, and you never had the body taken up and the clothes examined?

A. That is what I wanted them to do.

Q. Why didn't you do it? Why didn't you let it be known that he had a check on his person so the rest of us could have had it taken up?

A. I write up to Scott County, I wrote three different letters; I don't known that either one of them got out of the jail house, but I got no answer. Mr. Marmon told me that he had got a letter from my brother.

Q. You wrote out three letters to Scott County, Missouri?

A. Yes, sir.

Q. Why did you tell me a minute ago that the only letter that was ever written was written by Mr. Frederick, and now say that you had three others written?

A. I don't understand the question you ask me.

Q. You told me a minute ago that the only letter you had written up into Scott County, Missouri, in regard to this matter that Mr. Frederick had written, and he had given up your case, and you now turn around and tell me that you had three other letters written?

A. I told Mr. Marmon to write one, and he said he did.

170 Q. Why didn't you tell me that when you told me about Mr. Frederick?

A. And I wrote one myself.

Q. I thought you said you could not write?

A. I had it written in the jail house.

Q. You write pretty well; I see your signature here on two letters, and now you are telling me you wrote——

A. I can't write my a b c's.

Q. This is your signature ?

A. I write Lewis Holder ; that is all I can write. I very often make a mistake in that. I made a mistake in signing my name to a voucher in August last, and it came right back from Topeka, Kansas, to me, and I went over to Mr. Edmiston when it came back, and he fixed it up for me again.

Q. It now turns out you had four letters sent to Missouri ; is that true ?

A. Three.

Q. One that Mr. Marmon wrote, one that Mr. Frederick wrote, and you wrote one ?

A. Yes, sir.

Q. Did you write the one you wrote in English or German ?

A. I tell you I c'n't write ; Robert Garrett over in the jail house wrote it for me.

Q. Is he there now ?

A. No, sir ; he got out, come clear. You will find his name, I suppose on the docket.

Q. You say that he fell with his head up hill ; when you were pushing him were you pushing him up hill ?

A. Of course he must have slipped or something, I don't know, but he fell on his right arm.

Q. You pushed him up hill when you pushed him down. You have said that you pushed him down with the muzzle of your gun ; you have told how that was done. You pushed him up hill, did you ? He
171 was a *a* stronger man than you were ?

A. It looks like he was ; he was younger man ; he told me that he weighed 155.

Q. Who was the fellow that sent that draft to you ?

A. A fellow by the name of John Stout.

Q. There are a good many people that know him, are there not ?

A. He was getting out timber along on this Cairo branch.

Q. I asked you if there was not a good many there that knew him ?

A. Of course they ought to know him, all of them.

Q. What did he owe you this money for ?

A. For work.

Q. How long did you work for him ?

A. We worked for him from along the first of April until just about July.

Q. He never paid you ?

A. No, sir ; never paid nary one. He busted up and left, and he was gone some two or three weeks.

Q. How long did he owe it to you ?

A. From 1874.

Q. He owed it to you ever since 1874.

A. Yes, sir.

Q. That is 18 years ?

A. Yes, sir.

Q. He just sent you the check in time enough for you to buy the goods of the man that you killed, and nobody has ever seen it, and he is dead, too ?

A. Of course, I never see this man Bickedord in my life until he came to my shanty——

Q. Bickeford was an educated man, was he not? He could read and write?

A. Yes, sir.

Q. Did you tell him that the man had owed you this debt for 18 years?

A. No, sir; I did not, because I can't count; of course I told him he owed it to me since 1874.

Q. How could you satisfy him that the paper was worth anything?

A. He could see for himself.

172 Q. How could he tell up there in the woods?

A. He seen it in the night in my shanty.

Q. How could he know, or anybody else, who saw a paper of that kind, that it was worth anything?

A. It looks like if a man can read and write he ought to tell whether it is good or not.

Q. You had it how long?

A. I got it October, 1891, first of October, the 5th or 6th.

Q. Why didn't you get it cashed if it was good for anything?

A. I couldn't get any money anywhere; there is no bank at South McAlester, and there is nothing at Old McAlester, and there is none at Krebbs.

Q. Why didn't you come here?

A. I was coming here.

Q. Why didn't you do it before that? There was October, November, December, January.

A. You see we *we* couldn't come. Of course we were out hunting.

Q. Before that?

A. Before that we went out hunting.

Q. Why didn't you go down to Denison when you came back?

A. I shipped my things to Wister Junction and was going to Fort Smith; was going to send my boy to school.

Q. What I want you to explain is why did you keep that paper from October up until after Christmas; what day was't you killed this man, on th' day after Christmas?

A. I don't know wh't day it was; I could not tell you.

Q. It was before you went to Wilburton?

A. Yes, sir; it was a day or two before I went to Wilburton.

Q. You went to Wilburton on Christmas day, didn't you?

A. I don't know whether it was Christmas or not; I don't

173 recollect; I wa*w* seeing so much trouble and excitement.

Q. Your attorney has proved for you that you didn't appear to be excited, by witnesses?

A. I was excited; I didn't know this man I left the team with when he came here.

Q. Do you remember of seeing this Indian that testified here that he saw you on the 22nd?

A. Yes, sir; I remember seeing him. We camped right in by his house; his house was to the right. I saw him near his home.

Q. Then it must have been about the 23rd or 24th of December you did this killing; the day before Christmas, probably?

A. No, sir; we stopped two days on Blue Mountain, hunting, on the same day we saw this Indian——

Q. Was it the next day after you saw him you killed him?

A. No, sir; it was four or five days; 4 d'ys anyway.

Q. If it was four or five days you must have killed him after you came to Wilburton, because only three days after you saw the Indian you came to Wilburton?

A. I don't know the d'y of the month.

Q. I will go back the other way. How many days before you got into Wilburton was it you killed him? Did you go into Wilburton that day or the next day?

A. The next day after that.

Q. Then you killed him on the day before Christmas?

A. Yes, sir; of course I don't know whether it was Christmas or any other day.

Q. You killed him because you had to; you were afraid he would kill you?

A. Yes, sir; he said he would.

Q. You believe that he would have done it if you hadn't killed him?

A. Yes, sir; I know he would because he gave me four licks.

Q. You killed him in your own self-defense?

A. Yes, sir.

174 Q. You didn't care much about it; you said awhile ago that you intended to shoot his head off, and wouldn't have care' if you had done so?

A. Yes, sir.

Q. Why wouldn't you have cared?

A. When a body gets you into a scuffle that way they will do most anything.

Q. If you killed him in self-defense, if that was your feeling, when you went down to Wilburton why didn't you tell the people?

A. I tried to tell this man that I left the boy with, and he didn't stay there and I didn't get a chance.

Q. Why didn't you tell the other men?

A. I had no time.

Q. Why didn't you hunt up some officer, and tell him?

A. I didn't have time; that is the way of it. I of course went around and asked this man there was any marshal around there.

Q. You were inquiring for the marshals, were you?

A. Ye', sir.

Q. Were you afraid they would catch you?

A. No, sir; I would have give myself up right there.

Q. What did you went with a marshal?

A. Wanted to tell him how this thing happened; how it has been going on.

Q. When was it you quit wanting to tell, you and your boy—you never did tell—when was it you quit wanting to tell?

A. Of course we were coming here from there, and I just let it run; let it go.

Q. Let the man lay up there and rot while you were wearing his clothes?

A. Yes, sir; of course I didn't know anything hardly for the next ten days afterwards. My boy had to put the gears on the team.

Q. I suppose your boy was in the same condition?

A. I don't know. He didn't see anything.

Q. You told him about it?

A. No, sir; yes, I told him about it, but he didn't have to tell everything.

175 Q. You were where the boy could have heard the shooting, 200 yards away from you? He could have heard it could he not?

A. Yes, sir; he could hear the shots fired. He said he did.

Q. He claimed that he heard two shots fired, did he?

A. I don't know whether he said that or not, whether he heard them both or not.

Q. Did you hit the deer; did you kill it?

A. The deer scattered and I never hunted any further for it. It fell, but I don't know whether I killed it or not.

Q. Did Mr. Bickeford see the deer fall?

A. I guess he did.

Q. How long after the deer fell did he strike you with the slingshot?

A. I guess about half a minute afterwards.

Q. You were right down there in that gulch when you shot the deer?

A. Yes, sir.

Q. I suppose when you were scuffling around there you cut up the earth pretty lively, didn't you?

A. I don't know whether there was or not.

Q. What sort of a day was it?

A. It was a cloudy day.

Q. The ground wasn't frozen, was it?

A. No, sir; not that I know of.

Q. There was no freezing until after Christmas, to amount to anything, was there?

A. There was no cold weather until I came over here.

Q. It wasn't cold that day?

A. No, sir; I didn't suffer any.

Q. If it had been cold he would have had his overcoat on?

A. Yes, sir.

Q. He didn't have his overcoat on?

A. No, sir.

Q. Then it wasn't very cold?

A. No, sir.

176 Q. If that is the case you ought to have made some scratching around there with your heels?

A. It might have been there; of course I didn't notice that.

Q. Let us see about the thing you bought; you bought the mules and w'gon, you bought some clothes, you bought the trunks, you bought the beer box, you bought the hat—you got everything on eath that he had?

A. He had money in his pocket.

Q. It has not been found?

A. They must find it—there is some money there. He told me that he had money; that he had eleven doll'r' when he left Hartshorne, besides the four dollars and seventy-five that I gave him.

Q. You have said that when he left Hartshorne he was so poor that he could not get away; that he had to borrow some money from you; that he had to borrow $4.75.

A. He asked me if I could let him have some money.

Q. You claim that he made th' strip and came back with more money than he had when he came to you there at Hartshorne?

A. He didn't come to me at Hartshorne.

Q. Yes, at Hartshorne; I thought you said he came to you after he got into trouble the first time you ever saw him, didn't you?

A. A. Yes, sir.

Q. Then he did come there, didn't he?

A. Yes, sir.

Q. You only had five dollars?

A. Yes, sir; but my pension check was right on hand.

Q. Out of that five dollars you paid fifty cents to get the wagon fixed?

A. Yes, sir; when everything was fixed I had $16.25; when I left Hartshorne, me and Mr. Williams, and Joe; that much cash in my pocket.

177 Q. And he had $11.00 and the $4.75 you gave him?

A. Yes, sir; and he told me that he worked for his uncle three or four days——

Q. I don't care anything about that. What did you leave Hartshorne for?

A. I wanted to come over here to Fort Smith.

Q. Why didn't you come to Fort Smith right at once?

A. He asked me to go along with him to take this team, and he was to pay me back the money.

Q. What money?

A. The money that I let him have—the $4.75. He was to give me $5.00 instead of $4.75.

Q. Did you make the trade over there?

A. We did.

Q. You made the trade there at Hartshorne?

A. Yes, sir; right in the shanty, and betwixt the post-office and the hotel.

Q. Then you really bought the team at Hartshorne?

A. Yes, sir; I bought the team entirely, fairly, and squarely.

Q. At Hartshorne?

A. Yes, sir; and he had the privilege of taking it back if he wanted to.

Q. If you got it there, you had pen and paper; why not take a bill of sale? That is what I am getting at. You took no bill of sale. There was plenty of pen and ink there?

A. He wouldn't give any bill of sale unless I give more money.

Q. Why didn't you have some written contract?

A. He didn't want anybody to know that he left.

Q. You knew that he was leaving; what difference did *hit* make?

A. You see we kept it secretness; kept it hid from the marshal.

Q. You kept him hid from the marshals?

A. Me and Williams did.

Q. What did you do that for?

A. I didn't think I wanted the man in trouble; I didn't think
178 it amounted to anything, and I told him it was best to get away for a little.

Q. How long were you with him after you got together in the woods?

A. We were together 10 or 11 days.

Q. How long were you there with the team before he came to you, out there, you and Williams?

A. We had the team in possession for four weeks lacking about two days.

Q. You had it about long enough to begin to think it was your own, didn't you?

A. No, sir; I was uneasy when I left Wister Junction because the man didn't come.

Q. What did Williams leave for?

A. He bought some steers and wagon over there and he wanted to pay them what he owed them.

Q. Did he leave because he got into trouble?

A. No, sir; he did not; because he said he could not make anything, didn't have any gun, and there was no use of us being out hunting without a gun.

Q. I mean did he leave Hartshorne because he got into any trouble?

A. Mr. Bickeford had Mr. Williams to go along with me. He came to my shanty, and he said, "Mr. Williams wants to go along with you to hunt, and knows the country——"

Q. Nev'r mind that talk. This is the dead man's razor, is it not [handing witness a razor]?

A. Yes, sir.

Q. You had that in your possession in your trunk, didn't you?

A. Yes, sir.

Q. Did you shave yourself with it?

A. No, sir; I had a good razor of my own.

Q. So he didn't carry it off in his pocket when you made the trade?

A. He went off about a quarter of a mile and finally he came back——

179 Q. Came back and put it in the trunk of yours?

A. Hold on. I said "What is the matter, George," and he commenced laughing, and he said, "I found out where there is a place where there is lots of game——"

Q. What has that to do with the razor?—he put it in the trunk, didn't he?

A. He did afterwards; yes, sir.

Q. Which way were you going when this killing occurred; were you going towards Wilburton or away from it?

A. Towards Wilburton; of course, that was our way back; I wanted to get a bill of lading of my goods.

Q. You say he was drunk. Did you get out of the wagon when you went after the deer?

A. I got out of the wagon; I was kind of having rheumatis' in my back and I was walking behind.

Q. He was in the wagon and you had the gun?

A. Yes, sir.

Q. He called your attention to the fact that there was a deer there?

A. Yes, sir.

Q. You started after, then?

A. Yes, sir.

Q. He was drunk; the drunken man saw the deer, and called your attention to the deer, but when you were trying to run away from him he wasn't so drunk but what he could run, nor so drunk but what he could fight?

A. He commenced drinking his whiskey the evening before——

Q. Never mind that. That body could not be seen from the road?

A. No, sir.

Q. It was in a great deep gulch, was it not?

A. No, sir; it was not in gulley, just sloped off.

Q. About as level as this floor?

A. No, sir.

Q. Sloped off how much?

A. I don't know.

180 Q. It wasn't in a place of this kind [indicating]?

A. No, sir.

Q. When your gun snapped you got your box and got another cap?

A. Yes, sir; I got a cap in my mouth, and just as I put the box together he struck me, and I lost over half the caps, and the balance of them went in my coat pocket.

Q. You left some caps there?

A. Yes, sir.

Q. They were never found?

A. They never looked for them. I did not look for them anymore.

Q. Something attracted your attention; what was it attracted your attention?

A. I don't know.

Q. It wasn't the cocking of a pistol, was it, that attracted your attention?

A. I don't know what it was; I looked back and I happened to see him.

Q. You were on your knees at that time?

A. I was on one knee and he was on one knee.

Q. He got down on one knee to get a chance to kill you, hit you in the back?

A. Yes, sir; and I said, "George, what do you mean——"

Q. Never mind; don't go over it all. I want to find out what he was trying to kill you for?

A. He didn't say anything?

Q. You run and he run after you?

A. Yes, sir.

Q. You pushed him down with your gun?

A. Yes, sir.

Q. Pushed him on his hands and knees. Why did you shoot him when he was on his hands and knees; why didn't you step back three or four steps and throw your gun on him and say stop?

A. I was so wore out I could not stand on my legs hardly.
Q. What made you wore out?
A. Scuffling; we scuffled over ground bigger than this room here.
Q. You did?
A. Yes, sir; honestly.
181 Q. Did he have hold of your gun?
A. He had hold of the gun with his left hand; he struck the gun barrel one time, and broke that finger [indicating].
Q. Why didn't you shoot him before that?
A. I didn't have a cap on.
Q. What did you do with that cap?
A. I lost that cap, and I had to get another one.
Q. When did you get time to go in your pocket to get another cap?
A. How quick is that done?
Q. I thought you said they were on the ground?
A. I dropped some of them in my coat pocket; that is what I said.
Q. Did you put a cap on while he was on his knees?
A. Yes, sir; as he turned over.
Q. You didn't hit him and knock him over?
A. No, sir.
Q. You didn't hit him with the gun?
A. No, sir.
Q. You say you pushed him down with the gun?
A. Yes, sir; I put it against him and pushed it, and the ramrod lost out of it.
Q. What became of the ramrod?
A. I picked it up afterwards.
Q. You picked up the hat, and the ramrod and the sling shot?
A. Yes, sir.
Q. You can give no reason why you picked up the sling shot?
A. I just took it along.
Q. Do you know of anybody that lived at Hartshorne or anywhere else that ever saw him with a sling shot?
A. I don't know; he never made himself noticed with anything.
Q. Do you know of anybody that ever saw him with the sling shot in your life?
A. Yes, sir; boy of mine saw him.
182 Q. There ought to be somebody at Hartshorne knows this thing?
A. Of course, Sloan's wife went t' the wagon——
Q. She has been on the stand, and she didn't say anything about it. Why didn't you have her asked?
A. I never thought about it.
Q. You can have her recalled and asked about it.
A. And she said that he went down to the wagon to get the sling shot, went right back in the yard, and Sloan said, "If you want revenge just come on——"
Q. Never mind that.
Here court adjourned until to-morrow morning, August 30, 1892.
Defense rests.

183 The Government then introduced the following witnesses in rebuttal, viz, A. T. Echols (recalled), Israel Cooper (recalled), who testified as follows:

184 TUESDAY MORNING, *August 30th*, 18'2—8:45 *o'clock.*

Testimony introduced by the Government in rebuttal.

A. T. ECHOLS, having been duly recalled upon behalf of the Government in rebuttal, was examined by the district attorney, and testified as follows, to wit:

Question. I want you to get on the floor and show me just how that body was lying when you found it.

(Witness gets down on floor as requested.)

Lying on his right arm?

Answer. Yes, sir.

Q. Left hand over his back?

A. Yes, sir.

185 ISRAEL COOPER, having been recalled by the Government in rebuttal, was examined by the district attorney, and testified as follows, to wit:

Question. How was Mr. Bickeford lying, the dead man, when you found him, when you came to him?

Answer. He was lying on his right side.

Q. Where was his right hand?

A. It was under him.

Q. That is the way he was lying when you found him, is it?

A. Yes, sir.

Testimony closed.

186 After the close of the testimony and argument of counsel, the court charged the jury as follows:

187 In the circuit court of the United States for the western district of Arkansas. August term, 1892.

UNITED STATES } *vs.* } Murder.
LEWIS HOLDER. }

CHARGE OF THE COURT.

Delivered August 30, 1892, 2:50 p. m.

PARKER, *J.*:

GENTLEMEN: The defendant in this case, Lewis Holder, is charged with the crime of murder, for having on the 24th day of December, 1891, in the Choctaw Nation, taken the life of George Bickford by shooting him with a gun, and that this act of shooting, act of physical violence,

was done willfully and with malice aforethought. If this state of case is established, it makes the party who is the author of the death of George Bickford, under the law, guilty of the crime of murder.

Now, you will understand, of course, that the proof need not show that the date alleged in the indictment is the true date of the killing. It is necessary that the pleader should allege some date, yet the proof may show, as far as murder is concerned, any date, where the killing occurred prior to the time of the finding of the indictment, in this case on the 20th day of February, 1892.

188 There are certain things that are necessary to be found by you by this evidence, before you can pronounce the defendant guilty of the crime of murder. I will enumerate in detail the things that are necessary to be found. The first one is that George Bickford is dead. Now, there is no controversy in this case as to that proposition. That is a fact that is conceded on all hands. If it were not, it is a fact that the proof shows beyond any question. The second requisite to be found is that he died by violence of the kind named in the indictment. That is to say, was he shot with a gun or kindred weapon. The defendant says he shot him with a gun. The proof shows, in the shape of the wound, the character of the wound, that he was killed with an instrument belonging to that family—either a gun or pistol. Now, a word or two in reference to the character and location of this wound, or rather as to the location of it. It is said in argument that the wound, as described in the indictment, was "upon the right side of the breast of him, the said George Bickford," and that the proof did not show that the wound was in that place. It is not necessary that it should show it. When the location of the wound is described by the pleader, by the Government, when it presents the indictment to the grand jury it locates it at a certain place. If the proof shows it was on any part of the body, that is sufficient. There is no variance when that takes place. It very frequently happens that at the time the indictment was found that it would not be possible to get at with entire accuracy the location of the wound; it is located as on a certain

189 part of the body; that location is ascertained as best it can be done; when the proof is in it may show that the wound was in another part of the body. The proof in this case shows that the wound was inflicted in the back, from behind, and that it was that bullet, or some other one, perhaps another one, because the defendant tells you that he shot him with a gun, that came out in front under the chin, or in the front of the neck. Now, that does not make any difference; there is no variance in the law in that at all, because the principle is laid down that while the indictment may not show upon what part of the body the wound was inflicted, or that if the wound be stated to be on the right side, and be proven to be on the left, the variance is not fatal; it don't make any difference.

"Whatever be the averment it is not necessary in general that the description of the wound shall be correctly supported by the evidence."

So there is nothing in that, gentlemen, under the law, at all.

Now, the second proposition, as I have told you, is, did George Bickford die by reason of violence inflicted upon him, such violence as is named to have been inflicted by the indictment? That is, did he die because he was shot with a gun or pistol? In passing upon that question

you will take the evidence of his condition before his death, and the fact that he did die, and the fact that he was wounded in a vital part of the body, a wound which may naturally, probably, or reasonably produce death, and when you find that state of case, as reasonable men, you have a right to conclude that he died by reason of the infliction of that wound upon him, just as you would in coming to a conclusion
190 ordinarily, upon a subject of like character.

Now, the third proposition is, was this violence inflicted by the defendant? There is no controversy about that. The Government shows it; it offers to you, before the statement comes from the defendant, certain witnesses, a number of circumstances, for the purpose of showing that the defendant was the party who took the life of Bickford. The defendant goes upon the stand, and tells you himself that he shot him, that he killed him, that he took his life. That, then, raises a state of case about which there can be no controversy. You would have a right to find it from the circumstances alone, if there was nothing else in the case, if there was no admission of that fact. You will bear in mind that even in the case of a defendant witness you may take that which is against him and believe it, and disbelieve that which is in his favor. The law says if you feel you are authorized by the light of facts and circumstances to do so, that it is your duty to do so. Therefore, upon that proposition, there is no controversy. Again, when he sets up, through his counsel, that he killed him in his necessary self-defense, he legally admits the fact of killing, because that is a confession of the fact of killing, and an attempt to evade it by saying that he was doing that which he had a right to do. You may, therefore, put that proposition aside in your minds as one that is established beyond controversy in this case.

Now, the fourth proposition to be found is, was this violence inflict-
191 ed willfully and with malice aforethought? The Government says it was—through the district attorney, claims that it was inflicted in that way, and that the circumstances so characterize it—the circumstances surrounding this killing, in reference to the manner of its being done, and the subsequent conduct of the defendant, and the statements made by him in reference to the disappearance of his companion; that all of these circumstances are of the character that may be taken by you to authorize you to characterize this killing as one that had in it the element of willfulness, and the element known as malice aforethought. The defendant claims that it wasn't done in that way, but that it was done in such a way as that the act of killing was an act that under the law he is to be excused for, while his counsel claims in argument that it perhaps was a case which might be manslaughter. So you have this conflict, creating the issue that is the issue in this case, and that is the issue that looks to the characterization of this act of killing. First, you are to see whether it was a crime; and if so, what the character of crime was. Now, to do that correctly, you must have the definition of these expressions that enter into these crimes that go to make them up and distinguish them. You can only know when a crime exists by knowing how the law recognizes a transaction, knowing how the law defines conduct, or, in other words, how the law defines a crime, and if the conduct of the party fills to the full measure the definition of that crime, why crime exists, and it is your duty to say so.

Now, under the law, a homicide committed otherwise than by virtue of legal precept, by virtue of legal authority, must be
192 either murder or manslaughter, because there are but two grades of crime growing out of the taking of human life. One is a state of case where murder exists, and the other is a state of case where manslaughter exists. Any other case of man-slaying is excusable and not a crime at all.

Now, we will proceed, and will attempt to do so as briefly as possible, to define to you the characteristics that enter into the crime of murder, and especially that which is the distinguishing characteristic of murder, the trait which makes it murder, as distinguished from any other kind of homicide. I have said to you that these characteristics that enter into the crime of murder are the fact of willfulness, or that the killing was willfully done, and that it was done with malice aforethought. When done in that way you must find the crime to be murder, as you can find it to be nothing else.

Now, you will understand on the start that when you approach an investigation to ascertain whether these things that enter into the crime of murder exist you are approaching that which is purely a mental condition, and you can see it in no other light than by the light of circumstances. You can know it in no other way than by the circumstances of the killing and by the conduct of the party who is charged with the killing subsequent thereto. You will bear in mind, in this connection, that upon this point of your investigation, above all points that are involved in this case, you are to bring to bear your observation in life. You are men of
193 mature years, you have had each and 'very one of you, opportunities of observing the conduct of men in a given state of facts, or by the light of given circumstances. If, for example, a man does an act that is an innocent act, that is an act that does not come under the ban of the law, that is not a violation of the law of morals, you know that it is usual conduct, upon first opportunity, to have that act made known as done by him, especially if it is an act where he may be charged with the commission of a crime growing out of the act done. Then, above all other occasions, is he anxious to have his conduct known to his fellow-men and investigated by them, because if the conduct shows innocence, shows that the acts as done are not a crime, an investigation leads to vindication. This is resorted to by mankind from self-interest alone, if from no other consideration, because all men like to stand well with their fellows, and especially are they particular in shaping their conduct if they are innocent men, not being suspected, even, of the high crime of murder growing out of the taking of human life. The converse of that is true when men have consciously committed crime. Their conduct as a rule is the converse of that which I have already stated, and this you know by observation. Therefore, when you approach that particular problem that is to be solved by you, wherein is involved the characteristics of this crime, and when you know that its characteristics must grow out of the mental condition of the party at the time who performed the act, you are to approach a solution of that mental condition alone by the light of surrounding cir-
194 cumstances, and you can find it in no other way. There is no case, as I remark generally, where intent is an element, where the fact

as to whether the crime was done willfully, or with malice aforethought, are elements in it, that can be found other than by the light of circumstances.

Now, let us see what these expresssions mean in the law; what "willfully" means in the law, and how you may find its existence.

"The word 'willful' as used in connection with the charge of murder, such as that which is preferred in this indictment against this defendant, means an intentional killing, and not an accidental killing."

Now, perhaps we might with safety stop right there, by simply saying that if you find in this case that this defendant intentionally presented his gun at the deceased, George Bikeford, and fired that gun upon him, and Bickford died as a consequence of it, why you have the doing of a willful act; you have the doing of an act in such a way as to show that it was done willfully, by the very manner in which it was done, and because of the known connection between that act and the result being a usual connection, being a natural connection, being one that probably or reasonably may be produced from an act of that kind; if you find that the drawing and presentation and firing of the gun was intentional, you must find that the death of George Bickford was intentional, just as you would find it ordinarily. You see when you come into the jury box, you are not upon stilts; you are not to act upon any different principles than you act upon by the law of morals as citizens; you formulate your propositions and you arrive at your conclusions in precisely the same way as
195 you do as reasonable men. Now, let me ask you a question in this connection right here. Suppose you see a man shoot at another within shooting distance of him, and that other falls, don't you conclude that he intended to kill him; don't you conclude that the act as done by him was intentional? Certainly you do, and it doesn't take you any time to come to that conclusion, either. How do you conclude it? How do you know it? You see the conduct of the party; you know the nature of the weapon; you know the manner of its use; you see it; you know that weapon is an inanimate thing, and it can't use itself in any way. You know that it may lay for ages, and it is perfectly harmless unless it is used in a deadly manner by somebody who uses it in such an intelligent way as that he may produce a deadly result. You know that, and consequently when you see the presentation of the gun and the firing of it you see the doing of an act that indicates to your minds clearly and satisfactorily that the party who is doing that act is doing it willfully, and as a consequence you find that the result is willful. Now, let us proceed further.

"There is a great difference in the law between that which is accidental and that which is intentional. The law fastens intent to every act that is not an accident. Every act that produces death that is outside of the definition of the word 'accident' is intentional in the law, whether it grows out of a specific design to take life, or whether it grows out of gross carelessness; or whether it arises from a condition of mind that prompts the possessor of that mind to be engaged in some other wrongful or criminal act, and in the execution of it a life is taken, provided it is a wrongful or criminal act, which, from its nature and the way it was executed, as a natural and probable and reasonable result death may ensue from the execution of the unlawful or criminal act. That which is an

accident in the law is something which occurs after the exercise of
196 the care that the law requires to be exercised to prevent its occurrence. When a man exercises the amount of legal care exacted by the law, and something occurs beyond that, that is not his willful act."

Now, I call your attention in this connection to things that are produced by accident, that you may the better learn by comparison, by contrast, what the opposite condition is. The opposite condition of an accident in the law is a state of willfulness, whether there is a specific design to do the act done, or whether the party does it because of his failure to observe his duty in trying to prevent its occurrence. In either state of case, the law attaches the element of willfulness to the act. Now, when you have one opposition, and the direct opposite is the one that you are called upon to understand, when you comprehend the one, you can by comparison better comprehend the other, and that is why it is necessary sometimes to give these diametrically opposite propositions as they are defined by the law. The law, therefore, attaches willfulness to a state of case, to an act where the party intentionally does that act, as in the case that I have used as an illustration, where a man draws and presents and fires a gun, it attaches willfulness to that, because from the conduct of the party and the manner of his doing the act he had a manifest intent to do that act, and it was consequently willful. He had a specific design to execute that purpose; he had a specific design to execute that purpose, and it was consequently willful. Now, although he may not have
197 that purpose, but there is a reckless disregard of the rights of others, and he produces a deadly consequence, that is an act that is willful as well as the other, but in a state of case where the party admits the killing with a gun, where he admits the presentation and firing into a vital part of the body with a gun, you must find from that state of case that there is a state of willfulness, growing out of a specific design, out of a peculiar purpose to do that sort of an act. You can not ascribe that to reckless handling of firearms, or to the want of observation of that duty that is incumbent upon every citizen—to save human life rather than destroy it.

"If a man does an act which naturally, and reasonably, and probably, from its nature, and the way it is done, produces a certain result, that is held to be an intentional result, because the act as done in that way is intentional; and whenever the act is done, and it is an act that may naturally or propably produce a certain result, whenever the act is done intentionally the result is intentional. * * * If an act produces death, because there is a known connection between the act and the result which is probable, which is usual, and which is reasonable, the party is said to have intended the result, and consequently to have willed the result. Intent is something that can be found only by inference. It can only be found by circumstances in the case, by the nature of the act done, and the way it was done, and the character of the weapon used, bearing in mind that the law holds every man to know the nature of the weapon that he uses, the purposes for which it was constructed, and the results that naturally and reasonably are produced by it. That is recognized by the law as a matter of common knowledge within the mind of every man who has arrived at the years of discretion. For that reason when a man presents a gun or pistol at another, and shoots it at him, the law says he intends to kill him, because the killing is a result that is natural, or probable, or reasonable."

'So, in a case of that kind, when you are called upon to find whether he intends to kill or not, you find, first, whether he presented the deadly weapon in shooting distance of him, and fired it at him, whether that was a willful act, and when you find that from the character of the weapon used, and the manner of its use (because the weapon can not use itself, it can not present itself, it can not pull its own trigger, it can not of its own accord or of its own will power, because it has none, send the deadly missile into the body of the man who is killed, there is an intelligent will
198 power that does all that)—I say when you find a gun or pistol has been held in that attitude, and that it has produced a deadly result, as reasonable men, as men of common knowledge, of common observation, you must come to the conclusion that the party willfully produced the result.'"

"Now, you may take the act done. Your common observation teaches you that a gun or pistol fired at another within shooting distance of him will put his life in danger; it may probably destroy it."

Therefore, you take an act of that character, and if you can find from the circumstances offered in proof, or the admissions of the party charged, that he willfully or intentionally used the gun in that way, and the result was in this case the death of George Bickford, you must necessarily find that the act done by him was a willful act, and you must necessarily find that the death of George Bickford was willful; that he intended that result, because it is a result that naturally and reasonably follows from an act of that kind; and, in the interest of human life, the law says that men are not permitted to go about the country doing deadly acts upon others, and, when death ensues, say that they didn't intend to kill them. They are bound by the consequences of their own acts; the law holds them to have intended that which is the natural or reasonable consequence of the act done by them. Now, this is the trait of murder called willfulness, or that the act was done willfully. It is not the chief characteristic; it is not the distinguishing trait of it, however. The trait which distinguishes murder from other homicides is that it was done with malice aforethought. It, like the other, as I have told you, is a mental condition. It is the status of mind at the time the act was done. Therefore, you can only find it, as you find the other, by the light of circumstances. You can not find
199 it as a positive fact—that is to say, you can not find its existence by positive evidence, because positive evidence means that kind of evidence which says that the party who testifies, saw, or heard, or, by some one of the five senses given us to obtain information, obtained knowledge of the very thing itself. The very thing to be sought after in this case is the condition of the mind. You can not apply any one of the five senses directly to that condition and produce a positive fact sustaining a theory as to a certain condition of the mind. You can not do that. You can only look at it in the light of the conduct of the party. There is an intelligent connection between that mind and that conduct. The mind is the monitor of the body; it is the governor and absolute ruler of the human body, and every organ that it possesses is under the control of that mind, if it is in a normal condition, if it is in a natural state, if it is in the seat of its power, wielding the authority that belongs to it. A man stretches out his arm. Why, before he does it the electric current, as you may call it, passes from the brain, commanding that arm to be stretched

out, and it is stretched out in obedience to the power that the mind exercises. A man draws and presents a gun at his fellow-man, and fires it into his body; the mind commands that to be done before it is done. The mind behind the gun is not a mere automaton. There is a connection between that mind which he possess' and his arm, and the arm is commanded and put into use by the mind, whatever that use may be; the mind conceives it before the use transpires. A man walks, takes one step after
200 another; his legs are commanded to take those steps by the mind before he moves. You see that illustrated very strongly when a man is paralyzed; his mind is affected. He may start across the street, and may come out far above where he started. The mind has lost its power; the ruler of the body has been destroyed; its majesty and greatness has been subverted, and the mind becomes a mere machine; his legs no longer obey their ruler; they are in rebellion against it, because the connection between the mind and the members of the body, by means of disease, has been cut off, has been destroyed; but when the mind is in its normal condition you can with entire safety take an act done by a man, if you are looking for a mental characteristic—a mental condition—I say you can, with entire safety reason back from that act as a result, as an effect, to the cause of it, the condition of the mind, and you can do it with unerring uncertainty, when you do it intelligently, deliberately, and impartially. That is the only way by which we can find these elements of the crime of murder, or the mental elements that enter into any other crime where intent is an element of the crime. It is necessary that we should note with care this distinguishing trait of the crime of murder, and that we should, especially in a case of this kind, carefully observe the means that we may employ to get at that characteristic, to find its existence, because it is claimed by the defendant himself that he didn't do an act that has this characteristic in it. It is claimed again that if he did
201 commit any crime at all, it wasn't a crime of that kind, and we must know the distinction between these conditions, because we must find first if crime exists. That is an imperative duty, and it is a duty equally imperative to correctly, honestly, and fully characterize that crime if we find its existence, because we can not dally with the law; we can not tamper with it; we can not subvert its purposes by finding the existence of a crime, and then, because perhaps it may be a little easier for us, we can not drop down to something else. This is a concession to crime; it is a concession to vice; it is entering into partnership with bloody deeds that destroy human life, and that is not allowed. Men do not do that; they do not seek to do that as jurymen. They seek to find first if a crime of any kind was committed, and then to correctly name that crime, to characterize it, to say what it is. They can only say what it is by the light of the law defining it, and by means of the evidence showing what the truth is.

Now, what is mean' by malice aforethought?

"It is defined by the law in a general way to be the doing of a wrongful act without just cause or excuse, in such a way and under such circumstances as to show that it was wrongfully done, and that it was done in the absence of that which would give the party the right to defend against it, or that it was done in the absence of mitigating circumstances. And it is defined again as the doing of a wrong-

ful act without just cause or excuse, and in such a way as to show that he who did it had a heart void of social duty and a mind fatally bent on mischief. Again, let us see how the law defines it, and how it tells us we may find its existence. It can only be found by circumstances, because malice aforethought, like willfully, is something which exists only in the mind that is necessary to be found to make up the elements of the case, and as you can not get into the mind to know what is going on there, and you could not tell what was transpiring there if you could get into it, you must learn it in some other way; and there must be some rational way by which you may learn it, some way that rational men would adopt, because you are not authorized to adopt any other method than that which is reasonable in arriving at conclu-
202 sions, and there is a reasonable way, which is the way that the law recognizes as a proper way by which men may arrive at conclusions. It is from the nature of the transaction, the nature of what takes place, the character of the thing done, and all the surrounding facts and circumstances that you are authorized to take into consideration to see what was the nature of the thing done, whether it was an innocent act or a criminal act, and if a criminal act, what was the nature of that criminal act.

"'Malice aforethought is the grand criterion which distinguishes murder from other homicides, and it is not so properly spite or malevolence to the deceased in particular as any evil design in general.'"

A man kills another without any cause or without just excuse, in the law, or in the absence of legal provocation, though he may not have any particular enmity towards the party killed, and in a great majority of these murders, in fact all of them which are committed for gain; the party is prompted by the same desire as when he goes out and steals your horse; it is gain he is after; it may be a very small amount of gain; it may be a very inconsiderable amount, yet when it is manifest that that is the motive, there is no special spite against the man that is slain; he only slays him to accomplish his evil purpose of getting the property. But there is general malevolence; there is that condition which the law recognizes that characterizes the mind of a man who is totally regardless of the life of his fellow man; so regardless of this high right that for the sake of gain, for the sake of property, for the sake of putting out of the way the means between him and the possession of that property, he will take the life of a fellow man. There is a case where malice aforethought of the rankest character exists, though it only grows out of a state of general malevolence; it only grows out of a state of case where the primary pur-
pose was to get the property; for lucre, for gain, is the man slain.
203 That condition is said to be an evil design in general that the party possesses, and the law truthfully denominates it that. If a man becomes so far depraved, so regardless of the high duties resting upon him, morally and legally, as that he can take human life for robbery, for gain, for plunder, it shows a nature steeped in iniquity and debased in wickedness; it shows a state of case where a man's mind could be controlled only by such circumstances as show an act is done by reason of an evil design that is executed for the purpose of benefiting the party who executes that design, showing a state of case in which the act is dictated by a wicked, depraved, and malignant heart. It shows a purpose to do a wicked

act in itself; it shows a purpose that is malignant in its nature, to do a wicked act even at the expense of human life. It is a state of case where the law recognizes the existence of express malice. That is a state of case where this malicious intent or purpose is formed with a sedate and deliberate mind and formed design, which formed design may be evidenced, and is evidenced by the very purpose for which the killing is done. The existence of that purpose, if proven, shows that the act was thought of beforehand; it was therefore premeditated. It shows that it was deliberately done; it shows that it was not the conception of a moment, when such a conception was the result of a hot brain, superinduced by some provocative act upon the part of the party slain at the time he was slain.

204 I remark to you in this connection that the purpose of killing for plunder, for robbery, may be shown by the conduct of the party killing, with reference to the property of the party killed, after the killing, because you know as a matter of common observation, that when a man kills another in self-defense, or when he kills him in hot blood, a condition provoked by the adversary who is killed, that it is not the usual rule of human conduct that all of the property of the man so killed will be appropriated by the party who kills him, but, on the contrary, when there is an appropriation of the property, when there is a conversion to the use of the taker, when there is a purpose manifest to conceal that property, unless it is satisfactorily explained, just as there is in a case where your horse, or the horse of another citizen is found in the hands of a man recently after a larceny has been committed. You are authorized by the law to infer from the recent possession of the stolen property a purpose upon the part of the possessor to steal it, and that he may be held to be the one guilty of the larceny, unless he explains that possession upon a theory that his purpose was honest, was innocent, and that his possession was one authorized by the law. Then you go to the external circumstances, by means of which you discover the inward intention of the party, such as a concerted scheme to obtain the property of the party, even if it was necessary to do him some bodily harm to obtain it. In such a case it shows a deliberate act, and from the existence of such a deliberate act you
205 have a right to infer the existence of malice aforethought whether there was any particular enmity between the parties or not, because it is a state of general malevolence; it is a state where an evil design in general has been executed in a bloody way, and has resulted in the deprivation of a party of his life.

"So when a man kills another suddenly, without any or without a considerable provocation, the law implies malice, for no person, except of abandoned heart, would be guilty of such an act upon a slight or upon no apparent cause.

"'Malice is an intention to do bodily harm; a formed design to do mischief. It has also been defined as a deliberate intent to kill. It does not necessarily import especial malevolence towards the individual slain, but also includes the case of a generally depraved, wicked, and malicious spirit; a heart regardless of social duty, and deliberately bent on mischief. It imports premeditation.'"

Now, what is meant by that? How long does a man have to have a purpose to kill, before he executes it in order to give it a condition out of

which you can infer premeditation? Thought may be instantaneous with the execution of it; it may be cotemporaneous with it. A man may conceive a purpose to slay, and you know that he can instantly, in this age, execute that purpose so quickly that you can not discern the time elapsing between the conception of the purpose and the execution of that purpose; whenever there is that state of case where it is manife't that the party who kills has intentionally drawn and presented and fired a deadly weapon at another, you have an act that is premeditated, you have an act that is thought of beforehand, and you have an act, if it is not justified under the law, or mitigated so as to make it a case of manslaughter, from
206 the fact of the doing of the act, and the manner in which it was done, you have a state of case that shows malice aforethought.

"There must logically be a period of prior consideration; but as to the duration of that period no limit can be arbitrarily assigned. The time will vary, as do the minds and temperaments of men, and as do the circumstances in which they are placed. The human mind acts at times with marvelous rapidity. Men have sometimes seen the events of a lifetime pass in a few minutes before their mental vision. Thought is sometimes referred to as the very symbol of swiftness. There is no time so short but that within it the human mind can form a deliberate purpose to do an act; and if the intent to do mischief to another is thus formed as a deliberate intent, though after no matter how short a period of reflection, it none the less is malice.

"It is an intent of the mind and heart; the doing of a wrongful act without just cause or excuse, or in the absence of that which justifies the act, or which reduces the grade of the crime. Whenever a wrongful act is done without just cause or excuse, and in the absence of mitigating circumstances, which produces death, it is murder, whether it grows out of special spite or animosity or a specific design to take life, or the purpose to do some other act of a wicked and malignant and criminal nature, which, because of its nature and the way it is done, a human life is taken, malice aforethought exists, because that is the doing of a wrongful act without just cause or excuse, which results in murder. It evinces a formed design to do such mischief as may deprive a fellow-being of life."

A man conceives a purpose to kill another; he arms himself; he has a gun with which he can execute that purpose, and when the opportunity occurs he does execute it, that is murder. There is no self-defense in it; there is no manslaughter in it, because there is premeditation, because it is thought of beforehand, because a deadly design is conceived, and that deadly design is conceived either when there is a purpose directly in the mind to kill, or when there is a purpose to rob another; because in the attempt to rob, there is the doing of an act which may result in death, and the law says it is an act that when the party is seeking to execute it, and death results as a consequence, that it has malice aforethought
207 *it in*. Now, if a party conceives expressly and directly and immediately a purpose to kill, that he may rob the party afterwards and get his property, there is a specific design to take life, that is a state of case where there is a formed and deliberate purpose to take the life of the man as a result of that condition of mind.

"Malice is an intent of the mind and heart. You can not tell by direct proof, bearing in mind the distinction between these two kinds of

evidence, positive or direct proof, and circumstantial evidence, the condition of the mind and heart. Positive or direct proof is the proof which shows the existence of the very thing itself that you are hunting for."

In this particular case you are hunting for the condition of the mind. You must always hunt for that by the light of the circumstances. You can find it in no other way. If there had been twenty men out there who saw this man shoot Bickford they could come in here and tell you they saw the shooting. That would be positive evidence of it. That is not necessary to be found in this case in that way. You have already found it, because it is conceded; but if it hadn't been presented to you in that way, in that conclusive way, and twenty men out there saw the shooting, they could tell you they saw the shooting, but they could not tell you in a positive way what was the condition of this defendant's mind at the time of the shooting, because no man, no human power, could see it or demonstrate it in that way. They could only give you, as witnesses have given you, the circumstances of the case, that you will look to to enable you as intelligent and just men, as men of fair minds and impartial judgments to enable you to characterize that act, to say just what that act was,
208 because they can not see the mind any more than you can see it now; they could not see its condition with any more certainty than you can see it now. They could only know it by the light of circumstances, as you can know it now. So, I repeat, when it comes to finding this characteristic of the crime of murder, you can only know it by circumstances. Then what becomes of that declaration that no man should be convicted upon circumstantial evidence? No man ever would be convicted. All secret crimes would go unpunished, and they are the very worst ones. The very best of men may be thrown into passion by abuse, by provocation, when they suddenly commit a violent act, that may not be exactly justifiable under the law, and yet they may be good men, may kill even and be good men; men who ordinarily would not kill for the world; but when a man wants to do a wicked act, when he conceives a purpose to do a wicked act, one that he has to do in order to get property, he doesn't want any eye-witnesses; he don't want any jurymen to witness it, that they may pass upon it; he does not do that act when men may pass in judgment upon it; he seeks an occasion, he seeks an opportunity, and he does it, too, when he can execute his purpose and cover up his crime. An attempt to cover up crime is usually a very clumsy affair, because when a man takes human life wantonly and wickedly it is true that he begins to live in a new world that you and I have never inhabited and don't know anything about; he lives in another mental condition that surrounds him whenever he takes human life in that way; his judgment is faulty, his conclusions are irrational, his actions unnatural; he does not act like a man would who is clear and free
209 from crime, because he is living then in a world of crime, where the judgments of men are unreasonable, where their reasoning faculties are paralyzed, where they become incapable of looking at anything from a rational standpoint, and from their efforts at concealment, their very efforts to cover up the crime are the very means, when used by the light of reason and by intelligent men, which lead to their discovery, and to a discovery of the character of the act done by them. When these means used by them, when this conduct by them, and when these actions

done by them are squared by the usual conduct of innocent men, they don't conform to that conduct, they don't correspond with it. They are directly the opposite of it. If an act, however, is an innocent act, done in a thoughtless moment, done in an excited moment, done in a state of case where the law would give the party a right to rely upon self-defense, his actions and conduct as a usual rule will square with the actions of innocent men, consciously so. So it is by the light of these actions, by the light of this conduct, that we can characterize the condition of the mind of the party to see whether it was possessed by malice aforethought, or whether it was controlled by an honest motive, an honest desire, or a conception of an honest and innocent purpose.

"If, for instance, it becomes necessary to show that A shot at B, and C comes in and says that he saw A shoot at B, that is positive evidence of it, positive proof of the shooting, of the fact necessary to be found, and because the evidence is so near to the thing itself it is called positive evidence of it; when it is further off from that thing, but is still evidence standing around the thing done, it becomes circumstantial, or in other words, circumstantial evidence."

210 For instance, you see A with a gun—smoking gun—in his hand. You didn't see the shooting; no witness saw it; a man is lying dead, with a bullet hole through him. A makes no explanation of it; you find other circumstances showing his connection with the act, and you have a right to infer that he did it, just the same as though a witness came up here and said he saw him do the shooting. That is the difference between these two kinds of testimony.

"Circumstantial evidence is proof that may be equally cogent and equally powerful proof of the existence of a thing, but it is not the thing itself, but is that which shows its existence in the shape of the surrounding facts and circumstances, in the shape of that which attends every transaction in life, which goes to characterize it one way or the other."

Now, that is true; a man does an act that is represented from certain things that follow that act; we can do nothing in this world that is hidden, if our conduct is looked at, and by the light of that conduct we can correctly view an act and correctly name it.

"Which goes to show either that it was a criminal act, a criminal transaction, or that it was a transaction that was honest and upright and void of crime."

"There is never presented to a jury direct evidence of what was the intent of the man's heart at the time. He is the only possible and direct witness to that, and if he meant so to testify he would plead guilty. The existence or nonexistence of malice is an inference to be drawn by the jury from all the facts in the case. The emotions of the heart, the processes of the mind are to us or to anyone outside of the individual, exhibited by the acts which the individual perform and you are entitled to infer what his intent was, what were the processes of his mind and the feelings of his heart by a careful study of the acts which he performs, and all the other external indications which he may have given of what his state of mind and heart was. As an eminent text-writer has put it, there is no case of malicious homicide in which malice is not inferred from attendant circumstances; no case in which it is demonstrated as expressed."

"'It can not be demonstrated as express'."

211 "We have no power to ascertain the certain condition of a man's heart. The best we can do is to infer his intent, more or less satisfactorily, from his acts. Now, a person is presumed to intend what he does. A man who performs an act which he knows will produce a particular result, is, from our common experience, presumed to have anticipated that result and to have intended it. Therefore, we have a right to say, and the law says, that when a homicide is committed by weapons indicating a design, then it is not necessary to prove that such design existed at any definite period before the fatal blow. From the very fact of a blow being struck, we have a right to infer, as a presumption of fact, that the blow was intended prior to the striking, although at a period of time inappreciably distant, and thus we frequently find the statement laid down in reported cases and by text-writers that malice is to be inferred from the use of a deadly weapon."

Now, that, perhaps, ought to be modified. You take a case where a man uses a deadly weapon—kills with it—and there is nothing else shown but that, you have a right to infer from that alone that it has malice aforethought in it and it is murder, because, if there are other facts and circumstances connected with the killing going to exonerate the party, they will be shown as a part of the transaction; they will go to characterize the killing, go to show what sort of a killing it was; but if the killing was an act of deadly violence, was the execution of deadly purpose, and no explanation offered as to why that deadly violence was executed, that is a case where the proof shows that the act was done willfully, and the very fact that it was done willfully and in the absence of just cause or legal provocation, so as to justify or mitigate the crime, the fact of killing in that way shows a malicious killing, and shows a killing that has malice aforethought in it.

"Anything that shows deliberation, or anything that shows a premeditated purpose to do a wicked or willful act that might result in death, is evidence that may be considered by the jury as evidence of malice,
212 and of the existence of malice aforethought. For instance, the law lays it down as a principle, that if premeditation is shown, if the purpose to kill directly existed in the mind of the party or parties who killed, or the purpose to do a willful act that might result in death is shown by the actions of the party to have had a previous existence, an existence prior to the time of the killing, that shows the existence of malice aforethought, provided there is an absence from the case of that state of facts which goes to show the party had a right to do what he did do. The law lays it down that the deliberate selection and use of a deadly weapon shows premeditation, shows that the act was thought of beforehand; and whenever a party entering upon whatever unlawful or criminal enterprise he may enter upon, prepares himself with a deadly weapon for the purpose of using it in a wicked or unlawful enterprise, if it be one of that character, enabling him to consummate and carry out that enterprise, the selection of a weapon for that purpose is evidence of the existence of malice aforethought, is evidence of the existence of a purpose to do a wrongful act without just cause or excuse, in such a way as to show that the party who does it has a heart void of social duty and a mind fatally bent on mischief.

"That is the general definition of malice. It shows a purpose to do a wrongful act without just cause or excuse. That is the way you are to find it. You go to the killing. You ascertain how the killing was produced, the way it transpired, the way it was done; you see what character of weapon was used; you see whether that weapon was prepared beforehand, whether it was deliberately and willfully used at the time, and in a state of case where the evidence shows that the killing was willfully done, if there is an absence from the cause of that which shows that the right to so willfully kill upon the law of self-defence, or that the killing was willful, but there were mitigating facts attending it, the proof which shows that it was willfully done, shows that it was done with malice aforethought, and in a case of that kind, the very same degree of proof that establishes a willful killing would establish a killing with malice aforethought. Now, these are the two elements which make up this crime, that the act was done willfully and done with malice aforethought."

I have told you what they mean in the law. I have told you how the law says you may find them, and what methods you are to adopt to get at their existence. You can only find them by the light of the circumstances.

The defendant himself claims in this case that he killed this man
213 because he had a right to kill him under the law, and his counsel claims that perhaps there might be a state of case that is midway between the state of murder that I have defined, and this state of case where a man kills another, and be excused in doing it—that is to say, that perhaps the defendant is guilty of manslaughter. The crime of manslaughter does occupy a midway position between these two conditions. If it exists in a case, that is the way you are to characterize that case. It exists when there is driven out of the case malice aforethought, but the killing is done willfully.

A case of voluntary manslaughter is defined by the statute of the United States to be the killing of a human being willfully and in the absence of malice aforethought. It implies that at the time of the killing the party who was killed was doing that which was so far provocative in its nature—that is doing some act of violence or offering some indignity or committing some outrage upon the party who kills him at the time of the killing, as to put his mind so *for* far in a condition of frenzy as that it was incapable of acting deliberately, or acting in a way that was premeditated, but that it acted under the impulse of the moment, or, as is sometimes said, upon the spur of the moment, caused by the provocation offered by the party who was slain.

Now if the state of case is that represented by the defendant here, unless it be upon the theory that he could have avoided the danger that was being used against him, or created by the deceased at the time, and didn't exercise the care to avoid that danger, there would be nothing else in
214 the case but self-defense, if his theory is correct, if the statements he makes are true about it. If he could have avoided that danger (as you will learn after while from the law of self-defense), although it was real, although it then and there existed, and he didn't exercise the care that he might have exercised to avoid it, that would be a state of case where manslaughter existed, but there could not be any manslaughter growing out of any other phase of the case, because it is either murder or it is

this one condition, where he failed to exercise reasonable care to avoid the necessity of killing, or it is a state of case of self-defense, one or the other.

Now, there are two reasons why I give these definitions. They have been invoked in the case. Their invocation does not say that you can make an application of the law to the case of that kind. You are to do that alone by the light of the evidence. You are to see what the exact facts are, and then you are to measure these facts in these definitions. If they fill to the extent required by the law the definition of the crime of murder, then the crime of murder is made out, just as a yard of silk is ascertained by a merchant measuring it with his legal yardstick. The definition of the crime is exactly the legal yardstick you may use here. It is like the half-bushel measure established by the law, that you use to measure your grain with, if you are farmers at home, and if you measure these facts in the definition of crime, and the case that the law says
215 shall exist to make the crime of murder does exist, then there is nothing else in the case, and you are to say it is murder. On the contrary, if the definition of manslaughter fits the case you are to measure the facts in that, and if the definition of the law of self-defense fits the case you are to measure the facts in that, and act upon the conclusion as arrived at as reasonable men by thus squaring these facts with the definition of these conditions. I say that I give you these definitions for two reasons: First, they have been invoked upon one side or the other, and if they hadn't been it is a safe rule that you may understand all the conditions that may exist as growing out of the taking of human life, so if you do not find the existence of one you may find the existence of another by this right of exclusion that we have in coming to conclusions. If you find, for example, that one proposition is diametrically opposite to another, as in the case of murder and self-defense, or in a case of manslaughter and self-defense, and if you don't find that under the evidence self-defense exists, then you must necessarily find that either murder or manslaughter exists, because it is only these three conditions that can exist. Again, by comparison, when you have the definition of the crime of manslaughter, and if you find that that does not exist, and the state of case to which can be applied the law of self-defense does not exist, by exclusion, by excluding these two propositions from the case, you easily find the only one that remains in it, and that is the condition where murder exists. Now, you see by means of a court giving these propositions whether they have been invoked or
216 not, you are the more readily and clearly enabled to say what the crime may be in the case and you can then more accurately characterize it and name it. The defendant says that he 'ill/ed this man because he had a right to do it. Well, he could only get that right under the law, and if he gets it at all he must get it when he occupied a position out in the forest there, and in the gulch, as he claims it was done in gulch, of judge, jury, and executioner, all at the same time. That is just the attitude he is in, because he must find the facts that surround him at the time, and he must pass upon them as you would do, passing upon them in the light of his circumstances and his condition. That is the province of the jury under the law in a court. He then and there makes an application of the law to these facts, and he may not be a very good lawyer, either, yet he acts as a judge; he makes an application to the facts as you do here, but, of course, in a different way; you do it deliberately

and impartially, and when your minds are cool, with no other purpose in view except to find the truth of the case and to name th' character of the case made out by the proof. But he makes an application of the law to the facts, and he finds a verdict, and then he goes back upon his judicial bench and assumes the judicial ermine, and he enters up a judgment upon that verdict as a court, and then he throws off 'he ermine, and he takes in his hand the ax of the executioner, and he then and there executes that judgment. It is exactly this power that the law places in his hands when he
217 executes the law of self-defense. It is an extraordinary power. Extraordinary though it may be, it belongs to the citizen. Not when he imagines it, not when he conceives it, but when he is entitled to it by the light of the law declaring what self-defense means, what the right is. It is emphatically a law of necessity. No great power like that would ever be placed in the hands of an individual, except upon the great ground of necessity. It is a dangerous power as it is; it may be used improperly, it may be ignorantly used, when there is no design to violate the law, yet from necessity we must recognize its existence, but we are at the same time when we are called upon to administer the law to see to it that the state of case is made to which the law of self-defense can be applied; that the proof shows a state of case that under the law of self-defense the party is to be excused for the taking of human life, and we are to look at all the facts and circumstances to see whether the case is a case to which this law of self-defense can be applied, and whether the law defining one of these crimes is the state of case that does really exist. We can only view the right in the light of the law as can the citizen. It is not a right that he can use to cover acts, or stretch it that it may be applied to the occasion, or that it may be an application that is inappropriately made; we can only apply it as it is, finding the facts as they are, and then ascertaining whether these facts, when measured in the definition of the law of self-defense, fill it out to the extent required by the law.
218 And if it is filled out to that extent it is an innocent act; it is no longer a crime, though a homicide has been committed. Though a human life has been taken; though a human life has been sent into eternity unheralded and unprepared, yet it is a right that is to be vindicated; that is to be upheld, but only as it is given by the law. Let us see, briefly, what it is in the law. You all understand it; you understood it before you came to this court; you understand it, as just men, instinctively. You would not kill a man unless you had to do it, and when you had to do it your instinct would teach you the state of case that must exist before you could resort to the last remedy that is to be resorted to, the taking of the life of an individual citizen. But the right exists, and it is a right, when properly exercised, that is held to be a sacred right, just as is the right of society to defend itself. Now, if this right exists in the favor of the individual, does it exist in the favor of a number of individuals in this country—of the 65 or 70 millions of people who exist? Does it exist in favor of all of them, or is it only the right that is given to the individual citizen and prohibited to all citizens? It is claimed in this case, almost, that it is prohibited when exercised by the law in a legal way for the protection of all the citizens. It is only the right of self defense that you are upholding when you are seeking to vindicate and enforce the law in these trials that come before you, because it is by the measure of punishment

of the severest character, as we believe, in our social condition that an example can be held out to those who would wickedly and wantonly
219 a human life; it is only by holding before them the declarations of the Most High, that whoso sheddeth man's blood by man shall his blood be shed, that the principle of protection can be thrown around all members of society. And it seems to me that if this right of protection belongs to one man that there are 65 or 70 million reasons more why it should belong to that many people than to belong to but one, and it seems to me that the better way to enforce this law of self-protection is by men acting in a judicial and impartial way; by deliberate and impartial men in the courts of the country. And if it be a crime, if it be a sin, if it be wickedness, to find a verdict that may be followed by the death sentence, for the protection of all these people, it is certainly a still greater crime, a still greater sin, for the individual to shoot down a fellow-being and claim the right of self defense. Therefore, upon that line of argument there is no defense, for in accordance with that, if a man shoots at you, if he is attempting to take your life, you must let him take it, for fear that you would come under the ban of the mandate of the Most High.

Now, what is this law of self defense? First:

"A man who is in the lawful pursuit of his business, is attacked by another, under circumstances which denote an intention to take away his life, or to do him some enormous bodily harm, he may lawfully kill the assailant, provided he use all the means in his power otherwise to save his own life, or prevent the intended harm, such as retreating as far as he can, or disabling his adversary without killing him, if it be in his power."

That, in short, is the first proposition involved in this law; it means that the defendant, at the time that he killed George Bickeford, was doing what he had a right to do. If he was shooting at a deer
220 he was doing what he had a right to do, and if while so situated he was attacked by George Bickeford in a way that indicated a purpose to take his life; if he was attacked by him with a slung shot, that would indicate a purpose to take his life or to do him some enormous bodily harm; if he could not get away from that attack in any other way, he had a right to kill him. That is a short form of this principle that is applicable to this case, provided you believe that was the true state of affairs existing at the time of the killing. You are not necessarily to believe it was so because the defendant said so. That is positive evidence of the fact; he was an eye-witness to the occurrence. The defendant by his act makes it impossible for George Bickeford to come up and testify. He can only appear before you by means of these circumstances characterizing the conduct of this party at the time of the killing, and especially subsequent thereto; and these circumstances are the friends of George Bickeford, as they are the friends of the living. What I mean by that is that they are motiveless; that though they come before you in such form as to be stronger than proof of Holy Writ, they come before you speaking with tongues of marvelous power, yet no gold, no sympathy, no earthly consideration, can swerve or bias one of them from the right or from the truth. Therefore they are the friends of every man who is surrounded by the light of the truth, and whose case is characterised by the truth. They are to be invoked with entire reliance by every innocent person in every case to enable intelligent juries to intelligently and truth-

fully characterise that case. They represent the dead; they represent the man lying in the forest; they represent the man lying exposed to the wild beasts of the forest; they represent the man denied Christian
221 burial, and if they come before you, and they show a state of case that takes the killing out of the law of self defense and puts it in the category of that state of case defined as murder, then this rule doesn't *not* apply; it is out of the case. It is only given*n* to you for the reasons I have named.

The other rule comprehends a state of case that is not based upon the bare conception of a party, but a state of case that grows out of things actually occur'ing which may be delusive, which may be deceptive, which may lead astray, yet if they are facts which viewed by impartial men, situated as the party was at the time of the occurrence, and the party acts in good faith upon the appearance of things, he could act upon appearances alone, and he could even slay upon appearances. Let us see what the law says it is:

"When, from the nature of the attack, there is reasonable ground to believe that there is a design to destroy his life, or to commit any felony upon his person, the killing of the assailant will be excuseable homicide, although it should afterwards appear that no felony was intended."

Of course it comprehends the same proposition that is involved in the first one—that a man must seek to avoid an apparent necessity whenever he can, with due regard to his own safety. "When, from the nature of the attack," a man makes an attack upon another, or what seems to be an attack, as illustrated by the court giving this rule in the case, when he gave the example of A shooting at B with a gun, he held it exactly as a man holds it when he intends to kill; he pulled the trigger in the same way; the gun made the same sort of a report; his actions were apparently violent actions, as are the actions of men who are seeking to
222 kill; the man squared his conduct with that of a man seeking to take life, and in such a case the party acted upon it and slew the other; if he could not avoid what seemed to be real danger he could so slay him, the law says, although it might turn out that the man had no deadly purpose, but was simply "projicking," as the boy says, with the gun, was playing a foolish joke, or testing the courage of the man, yet his actions were of a character that indicated a deadly purpose, and a man may act under such circumstances and take life upon appearances, but he can not, upon a bare conception of d'nger in his own mind, act in that way; he can not do that.

I now have in as short a form as possible defined these propositions that make up the law of self-defense, and I have defined the crime of manslaughter, and I have defined the crime of murder. There are no other conditions, as I have already told you, that can grow out of the taking of human life, in this case the taking of the life of George Bickeford by the defendant. Now, what are you to do? You are first to consider in this case, as in all others, whether or not the defendant had any motive for this crime, not that that is necessary. For instance, if it was not proven here, or admitted here, that Bickeford had been killed by the defendant, but the circumstances showed it beyond any question, as far as the question of the killing by the defendant is concerned, you would not stop to hunt for motive; you do not stop to hunt for it in this case, though motive may lead

to a conclusion as to who has done the act, and it may go to characterise that act. In this case the defendant admits the killing. Then to prove
223 the defendant did the killing, why should you stop to inquire for a motive? If a motive is apparent in the case you do not want to use it to show that he killed Bickeford, but you may use it for the purpose of showing his condition of mind when he did kill him. If he had a motive, and that motive was to get Bickeford's property, that is a state of case which shows deliberation, shows thought of before hand, shows premeditation, shows previous preparation to do the killing, and, of course, banishes forever from the case any state of self-defense or anything like manslaughter. Where a man conceives a purpose to get another's property, and he slays him for that reason, you would shudder if I would tell you that that could be anything else but murder, because you know better; you instinctively know it would be the crime of murder, and nothing else. If a motive is apparent in the case you have a right to consider it for that purpose; not that it is necessary to show that he was killed, because you have that already in evidence; you have it from the circumstances otherwise. If that motive be to get gain, I say, it is a proper consideration to enter into the case, yet if you are to find that it is commensurate before you can find it, and consider it, you can never consider it at all, for the reason that the law recognizes the fact that men take human life often for very inconsiderable motives, for motives that are very disproportionate. It is sometimes argued, is it likely that one man should kill another for so small an article? Is it likely that the defendant in this case would kill George Bickeford for the mules and property that has been spoken of here by the witnesses? Let us read what the law says upon that subject:

224 "It is sometimes argued, is it likely that one man should kill another for so small an article? Are we not to infer when there is a homicide which is followed by the stealing of a mere trifle that the homicide was the result of sudden passion rather than lucri causa? Or for a mere prejudice or spite is it likely that one man would kill another and thus expose himself to the gallows? No doubt when a tender mother kills a child, or a friend kills a friend, and nothing more than the fact of the killing is proved, we may be led to infer misadventure, or insanity, from the motivelessness of the act. But we have no right to make such inference, because the motive is disproportionate. We are all of us apt to act on very inadequate motives; and the history of crime shows that murder' are generally committed from motives comparatively trivial. A man unaccustomed to control his passions and unregulated by religious or moral sense exaggerates an affront, or nourishes a suspicion, until he determines that only the blood of the supposed offender can relieve the pang. So, also, for the smallest plunder murders have been deliberately executed."

Now, right in that connection we may allude to the case that is a matter of common knowledge, alluded to by the district attorney—the murder of Abel by his brother Cane. This happened a long time ago, and, whether it ever occurred or not, it is one of those things that illustrates the workings of human nature. What was the motive that Cain had but a little jealously? Abel had better flocks; he had better offerings, as it is given, figuratively, in the Holy Writ, to offer up to the Deity; the seasons seemed to favor him more; he cultivated his ground better;

he was more prosperous—in short, the other man, if we could get at his real condition, was a loafing vagabond, who was envious of his brother, jealous of him, and slew him, and then denied that he knew anything about the murder, when he knew he had taken his life. The very first record we have of the existence of murder in this world is a case where, in your judgment, or in the judgment of any intelligent, honest, and Christian mind, the motive was entirely disproportionate, was entirely inadequate, especially to prompt one of the same blood to slay his
225 brother; yet it existed. And so it is all through the history of crime; we find that in a majority of the cases the motives are so trivial which lead the mind up to the point of criminality, or the point where the hands are dyed in human blood, that honest men may overlook the motive, may not see it, because it is disproportionate or inadequate. Here is another example given in the case I have just read from:

"We have an illustration of this in the trial of Muller in England, in 1873, for the murder of Briggs. Briggs's watch was seen by Muller in a railway car. Briggs was asleep; the watch was exposed, and Muller killed Briggs by sudden attack and succeeded in making his escape. He was afterwards arrested, convicted on circumstantial evidence, and before the execution confessed the homicide with the motive. Until the confession the justice of the conviction was largely criticised on the ground that the stealing of a watch was not a motive that could explain a murder so bold, so cruel, and with chances of exposure so great. But the reply to this is obvious. Crime is rarely logical. Under a government where the laws are executed with ordinary certainty all crime is a blunder as well as a wrong. If we should hold that no crime is to be punished, except such as is rational, then there would be no crime to be punished, for no crime can be found that is rational."

Why is that so? If a man would but sit down and think for a moment about his own interest, would he ever become a criminal? You take a man that steals a horse; he is likely to go to the penitentiary for it, and in the time that he may be sent to the penitentiary by honest toil he could earn five times the value of the horse. As a matter of economy of time alone, throwing morals out of consideration, he wouldn't do it. And when you come to the moral depravity of an act that is a crime, a thing that breaks down a man's moral conception, destroys his nature, so that he is incompetent every afterwards, unless he wipes out that stain forever, to judge between the right and wrong, that great part of our nature that is the better part and the higher part of it is destroyed, and when it is destroyed and broken down there is but
226 little left of us in this world that is worthy of consideration. Crime does that. It corrodes, corrupts, and debases the heart and mind of man when he commits it. Especially is that the case when a man commits knowingly the crime of slaying deliberately and premeditatedly a brother man, so that ever after, wherever he may go, upon what part of the earth he may travel, the form of that murdered fellow-man constantly haunts him, we are told. He is afforded no refuge when in the presence of honest men; he is banished from the presence and society of the innocent and the just, and yet this great punishment, this great moral punishment that surrounds him has been found not to be sufficient to restrain him even from a repetition of acts of a diabolical and wicked character, because men,

after they have once committed an act of that kind, seem to become accustomed to it, and they become less regardful of human life than they were before the first crime. Sometimes I shudder when I think of the little protection that is around us when we conceive of the fact that in our very midst, at our very doors, or in our very neighborhood, there may be lurking a man of criminal and murderous tendencies, a man who would take life for a trifling consideration. There is no security, and we are entirely defenseless, unless we can be armed and equipped with this mighty power called the law in the hands of honest and impartial and fearless jurors to enforce it, to throw it as a panoply of protection over the innocent and the just against the acts of these men who may be lurking here or there or everywhere with the purpose to slay for no other object than a little gain.

"The motive is never correlative to the crime; never accurately proportioned to it. Nor does this apply solely to the very poor. Very rich men have been known to defraud others even of trifles, to
227 forge wills, to kidnap and kill, so that an inheritance might be theirs. When a powerful passion seeks gratification, it is no extenuation that the act is illogical; for when passion is once allowed to operate, reason loosens its restraints."

Then look to the case to see whether or not the evidence shows the existence of motive. You may find that in the subsequent conduct of the party; see whether or not he appropriated all that belonged to this man as far as you can ascertain from the testimony; and, if so, whether that appropriation was by the means of an honest purchase, or whether it was taken after the man was killed. If it was taken after he was killed, without purchase, without his getting it honestly, then it is the doing of an act that would go to characterize the conduct as criminal, as a larceny, taken from the person of the man, or from his presence, by means of v'olence, or by means of taking his life. If you find that to be the state of case, you have in that state of case alone sufficient to enable you to characterize this killing as murder. Then find whether it was an honest purchase or not. You are to take the statements of the defendant upon that subject, and above all other statements you are to see whether in your judgment they are reasonable, they are probable, they are consistent, that they are in harmony with the truth; in other words, if they are true they are harmonious with all other facts in this case that are true, because the truth, when relevant, is always in harmony. If these statements made by the defendant in regard to this purchase, in the light of the other facts, or in their own light, are unreasonable or improbable, you may reject them, cast them aside as being worthless, as being an invocation of falsehood in the case to aid him when he is not sustained by the truth. On the other hand,
228 if they are reasonable, consistent, probable, and natural in their own light, and in the light of the other facts, then you are to give them weight. And then you are to take into consideration these other circumstances that have been offered before you. If the defendant made statements as to the disappearance of this man that were false, if he told the witness that the missing man had gone north after preparing himself for a journey, in the way described by the witness, when the man had been slain by the defendant, that is a statement that is not in harmony with the way that innocent men usually act, because innocent men generally act upon the self-evident principle that the truth is the only friend to inno-

cence that can be invoked. It always protects innocence where it exists. We are conscious of that; we are first made conscious of our own innocense, and we are conscious of the means that may be resorted to to vindicate that innocence in the estimation of our fellowmen. When we can do so, as a usual rule of human conduct, we act upon the truth, because when we do so we are equipped with the mightiest weapon in our armory, and the mightiest weapon that we can invoke. If the defendant made a statement of that kind, and at that time the man was dead, that he had killed him, and he had not gone north at all, and he knew it, that is a powerful fact that you have a right to take into consideration in this case to enable you to characterize the act and see what the manner of act was, and also to enable you to pass upon the question of the reasonableness of his statement in regard to how he got this property, and if in the light of such evidence as that, and in the light of the improbability and unnaturalness and the unreasonableness of the methods by which he obtained this property as described by him, you find a condition that leads you to conclude that he killed
229 this man for his property, you can come to no other result than that he is guilty of the crime of murder. And then you are to find whether he had the means or weapons with which the crime was committed. There is no controversy over that. You are to find whether he had an opportunity to commit the crime. There is no controversy over that. And you are to ascertain then what are the circumstances pointing towards the guilt of the defendant. It is your duty in this case to gather up all the facts that are inculpatory in their character. If this possession of the property of Bickeford by the defendant has not been satisfactorily explained, if he took it away from Bickeford without purchasing it after the death of Bickeford, you have a state of case where a man is found recently after the killing with the fruits of the crime in his possession, and the law says that is one of the most potential facts that may be considered by the jury as an evidence of guilt. The possession of the fruits of the crime after the killing must be explained to be an honest possession, or the very fact of the possession becomes an accusatory fact in the case of great power and great potency to show the character of the act done which preceded the taking of the property. Therefore, it is your duty to gather up all these accusatory facts, these facts that go to show guilt, that go to show what kind of an act was done by the defendant, and why it was done, and from them all you are to see what sort of a state of case is made out here—whether it is a state of case where crime is established or not. But you are not to stop there. You are to see what facts and circumstances have been offered by the defendant by way of explanation of these accusatory
230 facts because it may be he has been able to explain them all away in such a manner as to be satisfactory to you. If he has not, they remain as proven facts against him. See if they are left in that condition that when they are all considered together they leave the case in a condition where the charge of murder, or of crime, is established beyond a reasonable doubt, and if so your duty is to find the existence of that crime, and to correctly name it. You can not escape that result. The fault is not with you. If you had been called in to advise, the man would not have

been killed criminally; if you had been consulted, there would have been no action pending here against this defendant. But the duty devolves upon you to vindicate this violated law, if it has been violated. You can vindicate it in no other way than by finding, first, if crime exists, and then by correctly naming that crime.

You have one eye-witness to this occurrence. The fact that he may be an eye-witness may not give his statements any greater accuracy because he is an eye-witness than if he was not so situated, but where there is a contradiction clear and concise between the circumstances in the case, and the positive eye witnesses, you are to see whether there is any reasonable way of reconciling that conflict. If you can not reconcile it you have a right to see how powerful these accusatory facts in the shape of circumstances are, and if they overcome the positive statements because of their inherent falseness, or because of their falseness as discovered by the light of their inconsistency or their unreasonableness or improbability and unnaturalness, you have a right to reject them, and depend upon circumstances alone.

231 Then, again you may reject them because of the very situation of the party. He is standing before you in an attitude of having his liberty in one side of the scale and his life on the other side. He is conscious of that, presumably; and whether or not his moral nature is sufficiently strong, in your judgment, to enable him when confronted by such a condition, when placed in such a situation to stick to the truth, is a question you are to pass upon when you are considering his attitude in the case, his situation in it. If, in your judgment, that moral nature is not so strong, is not so high in its character, as under such circumstances he is not adhering to the truth, you may consider that situation as against him, and you may reject his evidence upon that ground, or you may reject it for the concurrent reason that the circumstances contradict him, and his situation is of that character that he may swerve from the truth, he may conceal it, cover it up, fabricate falsehoods, with the hope that it may relieve him from his situation. The law commands you to look at the situation of every witness in the case. That especially applies to a defendant witness, and you are to see whether the other facts in the case corroborate what he says. If he has made statements at other times that are contradicted by reliable witnesses, by witnesses whose testimony you can depend upon, and who say that these statements are not true upon the stand, if the witnesses are credible, because of their disinterestedness and because of their intelligence, and because of there not having an unusual interest in the case, you are entitled to believe such witness rather than the defendant.

Now, gentlemen, you are to take into consideration all these facts and

232 circumstances. You are to consider the evidence of the possession of this property. You are to consider the statements made as to the disappearance of this man that were not true. You are to consider every fact and circumstance in the case. If from all the evidence as you have heard it, after you have eliminated the truth from that which is false, you find the truth in the case to be strong enough in proving power to carry your minds to that condition where you are able to say there *there* is banished from the conclusion of guilt all doubts for which good reasons can be given, your duty is to believe the proposition is proven and regard it as being

established, because you are not to look for its being demonstrated as you can demonstrate a problem in mathematics. The law only requires you to find that it is proven to that degree of certainty that you would believe it as reasonable men upon a question of high concern and of great importance to yourself as affecting the ordinary affairs of life as citizens. If you would believe when this case was presented before you by the light of the evidence, and the light of the law defining the crime, as citizens, outside of the jury box, would say that this man is guilty of the crime of murder, as murder has been defined to you, then it is proven beyond a reasonable doubt, it is then proven to that degree of certainty known as a moral certainty, or a high degree of certainty, banishing from the case the only kind of doubt that you have a right to consider, regarded and defined by the law as a real, substantial doubt of guilt, and not a mere conjecture as to the possibility of innocence. We can find conjectures and surmises surrounding every proposition in life, but they are disregarded by us in passing upon weighty affairs, and in determining things that
233 pertain to the great and important events of life, and so we are to disregard them in the jury box.

It is unnecessary for me to detain you longer by reminding you of the great importance in a case of this kind of what is called circumstantial evidence, circumstantial proof, proof that is motiveless, yet that is powerful; proof that can not be induced to lie when it is produced by correct means, or through correct sources; proof that will enable us to characterize the nature of the act done, and enable us to say who did it. Then I ask you to look at the facts and circumstances in this case to enable you to correctly characterize this act, and if you find that the defendant has committed the crime of murder in the killing of George Bickeford, your duty would be to say that we, the jury, find the defendant guilty of murder, as charged in the within indictment. If you find he is not guilty of one or the other of the crimes that I have defined to you, your duty would be to say that you find he is not guilty of any crime.

You will retire to consider the case.

Mr. BYERS (of counsel for defense). If the court please—

The COURT. The rule is to send your exceptions up to the court without reading them. When you read them it only confuses the jury, and it is something with which they have nothing to do. Present your exceptions to the court and they will be filed by the clerk with the other papers in the case.

(Defendant presents exceptions to charge to the court.)

4:35 p. m.

234 Which was then excepted to by the defendant, whereupon the jury retired to deliberate and afterwards returned into court the following verdict:

"We, the jury, find the defendant, Lewis Holder, guilty of murder as charged in the within indictment.

(Signed) "WILLIAM ALLEN, *Foreman.*"

And afterwards, namely, on the 12th day of September, A. D. 1892, the defendant files his motion for a new trial:

"In the circuit court for the west. dist. of Ark.

UNITED STATES }
vs. } Murder.
LEWIS HOLDER. }

"Comes the defendant and moves the court to set aside the verdict in the above-entitled cause and grant him a new trial for the following reasons, to wit:

"1st. That the verdict was contrary to the law.

"2nd. That the verdict is not supported by the evidence.

"3rd. The verdict is contrary to the law and the evidence."

Which was by the court received and overruled, to which ruling the defendant, then in error, excepted. And upon the 19th day of September, A. D. 1892, the court sentenced the defendant to be hanged.

To which judgment and sentence of the court the defendant,
235 by his counsel, at the time excepted and herewith tenders his bill of exceptions and prays that the same may be signed and made a part of the record in this cause, which is accordingly done.

I. C. PARKER,
U. S. Dist. Judge holding Circuit Court.

236 In the circuit court of the United States, in the western district of Arkansas, August term, 1892.

Assignment of errors.

UNITED STATES }
vs.
LEWIS HOLDER. }

1st. The court erred on his instructions in reading other law books.

2nd. The court erred in commenting upon the evidence.

3rd. The court erred in giving its instructions.

4th. The court erred in overruling the motion for new trial.

5th. The court erred in rendering judgment and sentence against the defendant.

Wherefore, the above stated errors considered, the said defendant prays that the judgment and sentence against him be reversed.

LEWIS HOLDER,
By BYERS & BYERS,
His Attorneys.

237 In the circuit court of the United States for the western district of Arkansas, August term, 1892.

UNITED STATES
vs.
LEWIS HOLDER. } Murder.

Comes the defendant in the above-entitled cause and prays that he may be permitted to prosecute his appeal as a poor person for the following reasons, viz, that he is in indigent circumstances and is not worth over ten dollars above his wearing apparel.

LEWIS HOLDER.

Sworn to and subscribed before me, this 19th day of September, A. D. 1892.

STEPHEN WHEELER, *Clerk.*
By W. B. PAPE, *D. C.*

I hereby certify that Lewis Holder is a poor person and entirely unable to pay the costs of taking his case to the Supreme Court.

I. C. PARKER,
U. S. Dist. Judge.

238 *Petition for writ of error.*

In the circuit court of the United States for the western district of Arkansas, August term, 1892.

UNITED STATES
vs.
LEWIS HOLDER. } Murder.

To the clerk of the circuit court of the United States for the western district of Arkansas:

Your petitioner, Lewis Holder, respectfully represents that at the August term, A. D. 1892, of the said court he was convicted on an indictment charging him with the crime of murder, and that the said court has pronounced judgment and sentence of death upon this petitioner on the verdict of the jury, convicting him as aforesaid; your petitioner alleges that in the record and proceedings in the trial in said cause there is great and manifest error to the prejudice and great damage of your petitioner.

He therefore prays that a writ of error from the Supreme Court of the United States be issued by you, under the seal of the said circuit court in said cause, removing said cause and the record therein to the Supreme Court, in order that the same may be there examined, and if error be found that the judgment and sentence against him therein may be reversed.

LEWIS HOLDER,
By BYERS & BYERS,
His Attorneys.

Filed Sept. 19, 1892.

S. WHEELER, *Clerk.*
By I. M. DODGE, *D. C.*

239 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America and Lewis Holder a manifest error hath happened, to the great damage of the said Lewis Holder, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 2nd Monday of Oct. next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 26th day of Sept'r, in the year of our Lord one thousand eight hundred and ninety- .

STEPHEN WHEELER,
Clerk of the Circuit Court of the United States for the Western Dist. of Arkansas.

Allowed by

240 UNITED STATES OF AMERICA, *ss:*

The President of the United States to William H. H. Clayton, esq., United States attorney for the western district of Arkansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the western district of Arkansas, wherein Lewis Holder, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac C. Parker, judge of the district court of the United States, this 26th day of September, in the year of our Lord one thousand eight hundred and ninety-two.

IC. PARKER,
U. S. District Judge, holding Circuit Court.

241 On this day of , in the year of our Lord one thousand eight hundred and ninety- , personally appeared before me, the subscriber, and makes oath that he delivered a true copy of the within citation to .

Sworn to and subscribed the , A. D. 18 .

I, Wm. H. H. Clayton, U. S. attorney for the western district of Arkansas, do hereby acknowledge service of the within citation, the 26th day of September, 1892.

WM. H. H. CLAYTON,
U. S. Att'y, West Dist. Ark.

242 In the circuit court of the United States, western district of Arkansas.

I, Stephen Wheeler, clerk of the circuit court of the United States in and for the western district of Arkansas, hereby certify that the foregoing is a true and correct transcript of the record in the case of the United States vs. Lewis Holder, indicted for murder.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fort Smith, in said district, this 29 day of September, A. D. 1892.

[SEAL.]

STEPHEN WHEELER, *Clerk.*
By I. M. DODGE, *D. C.*

(Indorsement on cover:) Case No. 15156. W. Arkansas. C. C. U. S. Term No., 826. Lewis Holder, plaintiff in error, vs. the United States. Filed October 4th, 1892.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

LEWIS HOLDER, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
No. 1186.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

LEWIS HOLDER, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES. } No. 1186.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

MOTION TO ADVANCE.

This case is a writ of error to a judgment of the circuit court for western Arkansas, sentencing the plaintiff in error to be hanged for a murder committed in the Indian country.

In accordance with section 6 of the act of February 6, 1889 (25 Stat., 656), I respectfully move the court to advance the case and assign the same for argument at the beginning of the next term of the court.

CHARLES H. ALDRICH,
Solicitor-General.

19637

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FILED,
OCT 16 1893
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CLERK.

Case No. 15156.

Supreme Court of the United States.

OCTOBER TERM, 1893.

LEWIS HOLDER, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 826.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

Case No. 15156.

Supreme Court of the United States.

OCTOBER TERM, 1893.

LEWIS HOLDER, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 826.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

Lewis Holder was convicted on indictment for murdering one George Bickford at the Choctaw Nation, in the Indian Territory, December 24, 1891. The defendant admitted that he killed Bickford, but claimed that he did it in self-defense, telling a rather unlikely story. He was found in possession of Bickford's horses and wagon, but claimed to have bought these from the murdered man, giving him a draft on a man named Stout. The draft was for money owed by Stout for fourteen years, and this

part of the story was also unlikely. Defendant claimed that he did not take the draft after he killed Bickford, yet it was not found on his body. Defendant wore Bickford's hat and overcoat after the killing, and claimed to have traded hats with Bickford, but had no explanation to give as to the overcoat.

Bickford appeared to have been shot *in the back*. After the killing, defendant told his boy not to tell about it, and stated to the marshal who arrested him that Bickford had "gone north." On cross-examination, he said: "I wouldn't have cared if I had shot his head off, because the evening before he took my bottle of whisky."

There are no exceptions in the case, except to the denial of a motion for a new trial.

Denial of a motion for a new trial is not assignable error (*Henderson* v. *Moore*, 5 Cranch, 11; *Marine Ins. Co.* v. *Young*, *id.*, 107; *Marine Ins. Co.* v. *Hodgson*, 6 Cranch, 206, 218; *Blunt* v. *Smith*, 7 Wheat, 248; *McLanahan* v. *Universal Ins. Co.*, 1 Pet., 183; *United States* v. *Buford*, 3 Pet., 32; *Brown* v. *Clarke*, 4 How., 4, 15; *Pomeroy's Lessee* v. *Bank of Indiana*, 1 Wall., 592, 597–8; *Freeborn* v. *Smith*, 2 Wall., 160, 178; *Newcomb* v. *Wood*, 97 U. S., 581, 583–4; *Railway Co.* v. *Heck*, 102 U. S., 120; *Hanna* v. *Maas*, 122 U. S., 24, 26; *Crumpton* v. *United States*, 138 U. S., 361, 368, and other cases cited in 1 Ind. Dig. U. S. Sup. Ct. Rep., pp. 246–7), whether on the ground that the verdict was contrary to law and unwarranted by the testimony, or otherwise. (*Wilson* v. *Everett*, 139 U. S., 616, 621.) "No authorities need be cited in support of the proposition." (*Van Stone* v.

Stillwell Co., 142 U. S., 128, 134.) It "is too plain for argument." (*Barr* v. *Gratz's Heirs*, 4 Wheat., 213, 220.) "Such a motion is not a part of the proceedings in the cause. It is an application to the discretion of the court" (*United States* v. *Daniel*, 7 Wheat., 542, 548, *per* Marshall, C. J.), and for this reason was held not a proceeding, a difference of opinion upon which could be certified under the act of April 29, 1802. (*Id.*)

It is respectfully submitted that the judgment should be affirmed.

EDWARD B. WHITNEY,
Assistant Attorney-General.